No. 02-241

Supreme Court, U.S.
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In The Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, AND THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN, *et al.*,

Respondents,

and

KIMBERLY JAMES, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1 TO 126

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RELEVANT DOCKET ENTRIES

U.S. Court of Appeals for the Sixth Circuit

No. 01-1447

4/2/01	Civil Case Docketed. Notice filed by appellant Lee Bollinger, Appellant Jeffrey Lehman, Appellant Dennis Shields, Appellant Univ of MI. Transcript needed: y ☐ (ert)
4/2/01	Appellant MOTION filed to stay district court order. Motion filed by Philip J. Kessler for Appellant Univ of MI, appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger. Certificate of service date 4/2/01 [01-1447] (ert)
4/2/01	Appellant MOTION filed to consolidate for briefing and submission cases 01-1333; 01-1416; 01-1418; 00-1447. Motion filed by Philip J. Kessler for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger. Certificate of service date 4/2/01 [01-1447] (ert)
4/2/01	Appellant MOTION filed to consolidate for briefing and submission cases 01-1333/ 1416/ 1418/1438/1447, to expedite appeals. Motion filed by John Pickering for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger. Certificate of service date 4/2/01 [01-1447] (blc)
4/4/01	Copy of District Court Order filed denying motion to stay injunction. [01-1447] (ert)
4/5/01	Appellee RESPONSE in opposition filed regarding a motion to stay district court order [2332291-1]; previously filed by

Philip J. Kessler. Response from Kirk O. Kolbo for Appellee Barbara Grutter. Certificate of service date 4/5/01 (faxed) [01-1447] (blc)

4/5/01 ORDER filed granting motion to stay district court order [2332291-1] filed by Philip J. Kessler H-APPL [01-1447]. This appeal shall be expedited upon this court's docket in accordance with an expedited schedule that shall be issued by the clerk forthwith. Boyce F. Martin, Jr., Chief Judge, Martha C. Daughtrey, Karen N. Moore, Circuit Judges. (blc)

* * *

4/23/01 ORDER filed granting motion to consolidate Case Nos. 01-1447/1516. Both cases will be heard before the same panel on the same day. Case No. 01-1516 shall be briefed with 01-1447 as follows 5/16; 6/15; 6/29; 7/13; 7/17. [2342678-1] [2342678-3] [01-1447, 01-1516] No extensions will be granted. Any briefs not timely filed will not be considered by the hearing panel. Supplemental citations under FRAP 28(j) will be strictly enforced. These cases will be argued during the October term of court. in 01-1516. (blc)

* * *

5/14/01 PETITION for en banc hearing filed by Kirk O. Kolbo for Appellee Barbara Grutter. Certificate of service date 5/11/01. [01-1447, 01-1516] (blh)

5/17/01 PROOF BRIEF filed by John Payton for Appellant Univ of MI, Appellant Dennis

Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447. Certificate of service date 5/16/01 Number of Pages: 56 (13950). [01-1447] (rgf)

* * *

6/4/01 ORDER filed placing the petition for hearing en banc in abeyance. [2367451-1] [01-1447, 01-1516] Entered by order of the court. (blh)

* * *

6/18/01 PROOF BRIEF filed by Kirk O. Kolbo for Appellee Barbara Grutter in 01-1447, Kirk O. Kolbo for Appellee Barbara Grutter in 01-1516. Certificate of service date 6/15/01. Number of Pages: 61 (13964). [01-1447, 01-1516] (rgf)

* * *

7/2/01 PROOF REPLY BRIEF filed by John Payton for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447 Certificate of Service date 6/29/01 [01-1447] Final reply brief due 7/27/01. [01-1447] 30 pgs (6955) (rgf)

* * *

7/16/01 APPENDIX filed by Robin A. Lenhardt for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447. Copies: 5 + 10 (21 vols.) for en banc hearing. Extract copies received 10/29/01. Certificate of service date 7/13/01 [01-1447, 01-1516] (ert)

* * *

7/30/01 FINAL BRIEF filed by John Payton for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447. Copies: 07. Certificate of service date 7/27/01 Number of Pages: 57 (13817). [01-1447] (rgf)

* * *

7/30/01 FINAL REPLY BRIEF filed by John Payton for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447. Copies: 07. Certificate of service date 7/27/01 Number of Pages: 30 (6959). [01-1447] (rgf)

7/30/01 FINAL intervening defendants BRIEF adopting briefs filed by defendants in this appeal and by themselves in related appeal 01-1516 filed by Miranda K.S. Massie for Appellee Kimberly James in 01-1447. Copies: 07. Certificate of service date 7/27/01. Number of Pages: 04. [01-1447] (rgf)

* * *

7/30/01 FINAL BRIEF filed by Kirk O. Kolbo for Appellee Barbara Grutter in 01-1447, Kirk O. Kolbo for Appellee Barbara Grutter in 01-1516. Copies: 07. Certificate of service date 7/27/01. Number of Pages: 64 (13995). [01-1447, 01-1516] (rgf)

* * *

10/19/01 ORDER filed granting petition for en banc hearing [2356046-1], [2356062-1], and [2356074-1] filed by Kirk O. Kolbo. Boyce F. Martin, Chief Judge; Danny J. Boggs,

Eugene E. Siler, Alice M. Batchelder, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, Ronald L. Gilman, Circuit Judges. (blh)

* * *

11/9/01 Oral argument date set for December 6, 2001 in court room 403. Notice of argument sent to counsel. [01-1447, 01-1516] (rld)

* * *

12/6/01 CAUSE ARGUED on 12/6/01 by John Payton for Appellant Univ of MI, Appellant Dennis Shields, Appellant Jeffrey Lehman, Appellant Lee Bollinger in 01-1447, Miranda K.S. Massie for Appellee Kimberly James in 01-1447, Kirk O. Kolbo for Appellee Barbara Grutter in 01-1447, John Payton for Appellee Regents of Univ MI, Univ of MI, Dennis Shields, Jeffrey Lehman, Appellee Lee Bollinger in 01-1516, Miranda K.S. Massie for Appellant Law Students, Appellant Coalition Defend, Appellant United Equality, Appellant Carol Scarlett, Appellant Oscar De La Torre, Appellant Melisa Resch, Appellant Winifred Kao, Appellant Meera Deo, Appellant Jasmine Abdel-Khalik, Appellant Russ Abrutyn, Appellant Scott Rowekamp, Appellant Norberto Salinas, Appellant Bernard Cooper, Appellant Kevin Pimentel, Appellant Julie Kerouac, Appellant Shannon Ewing, Appellant Masley Jodi-Marie, Appellant Jaasi Munanka, Appellant Yolanda J. King, Appellant Cassandra Young, Appellant Paul Aleobua, Appellant Agnes Aleobua, Appellant Herbert Dowdell,

Appellant Mary Gibson, Appellant Gibson Yolanda, Appellant Karla Stephens-Dawson, Appellant Karla Stephens-Dawson, Appellant Hoku Jeffrey, Appellant Vincent Kukua, Appellant Edward Vasquez, Appellant Arturo Vasquez, Appellant Gerald Ramos, Appellant Irami Osei-Frimpong, Appellant Nora Cecilia Melendez, Appellant Ronald Cruz, Appellant Ashwana Carlisle, Appellant Heather Bergman, Appellant James Huang, Appellant Jessica Curtin, Appellant Julie Fry, Appellant Diego Bernal, Appellant Shalamarel Kevin Killough, Appellant Dena Fernandez, Appellant Shabatayah Andrich, Appellant Raymond Michael Whitlow, Appellant Jeanette Haslett, Appellant Farah Mongeau, Appellant Kimberly James in 01-1516, Kirk O. Kolbo for Appellee Barbara Grutter in 01-1516 before Judges Martin, Boggs, Siler, Batchelder, Daughtrey, Moore, Cole, Clay, Gilman. [01-1447, 01-1516] (me)

5/14/02 OPINION filed: REVERSED. The district court's injunction prohibiting the Law School from considering race and ethnicity in its admissions decision is VACATED [01-1447, 01-1516], decision for publication pursuant to local rule 206 [01-1447, 01-1516]. Boyce F. Martin, Chief Circuit Judge, delivered the opinion of the court, in which DAUGHTREY, MOORE, COLE, and CLAY joined. Moore, Circuit Judge, delivered a separate concurring opinion, in which DAUGHTREY, COLE, and CLAY, joined. CLAY, Circuit Judge, delivered a separate concurring opinion in which DAUGHTREY, MOORE, and COLE

joined. BOGGS, Circuit Judge, delivered a separate dissent, in which SILER joined in part, and BATCHELDER joined. SILER, BATCHELDER, and GILMAN also delivered separate dissenting opinions. (blc)

5/14/02 JUDGMENT: REVERSED,: VACATED. (blc)

* * *

12/5/02 U.S. Supreme Court letter filed granting petition – [2610718-1] filed by Barbara Grutter. Filed in the Supreme Court on 12-02-02. (swh)

U.S. District Court

for the Eastern District of Michigan (Detroit)

12/3/97	1	COMPLAINT – Receipt # 353648 – Date Fee Received: 12/3/97 (db) [Entry date 12/05/97]
12/3/97	2	SUMMONS returned executed by personal service on 12/3/97 – answer due 12/23/97 for Lee Bollinger (db) [Entry date 12/05/97]
12/3/97	3	SUMMONS returned executed by personal service on 12/3/97 – answer due 12/23/97 for Dennis Shields (db) [Entry date 12/05/97]
12/3/97	4	SUMMONS returned executed by personal service on 12/3/97 – answer due 12/23/97 for Univ MI (db) [Entry date 12/05/97]
12/3/97	5	SUMMONS returned executed by personal service on 12/3/97 – answer due 12/23/97 for Univ MI Law School (db) [Entry date 12/05/97]
12/3/97	6	SUMMONS returned executed by personal service on 12/3/97 – answer due 12/23/97 for Jeffrey Lehman (db) [Entry date 12/05/97]

* * *

12/22/97	8	ANSWER by defendants to complaint [1-1] with proof of mailing (lh) [Entry date 12/30/97]
12/22/97	8	AFFIRMATIVE defenses by defendants with proof of mailing (lh) [Entry date 12/30/97]
1/8/98	9	DEMAND by plaintiff Barbara Grutter for jury trial with proof of mailing (ls) [Entry date 01/09/98]

* * *

3/27/98	13	MOTION by Kimberly James to intervene as party defendant with brief, exhibits, notice of hearing and proof of mailing (PP) [Entry date 03/30/98] [Edit date 05/27/99]

* * *

4/22/98	16	RESPONSE by plaintiff Barbara Grutter to motion to intervene as party defendant [13-1] (lh) [Entry date 04/23/98] [Edit date 05/27/99]
4/23/98	18	RESPONSE by Dennis Shields, Jeffrey Lehman and Lee Bollinger to motion to intervene as party defendant [13-1] with proof of mailing (lt) [Entry date 04/27/98] [Edit date 05/27/99]

* * *

5/18/98	22	REPLY by movants to response to motion to intervene as party defendant [13-1] with proof of mailing (pd) [Entry date 05/27/99]

* * *

7/6/98	24	MEMORANDUM opinion and order by Judge Bernard A. Friedman denying motion to intervene as party defendants by Kimberly James [13-1] (DT) [Entry date 07/07/98] [Edit date 05/27/99]

* * *

7/15/98	26	MOTION by Lee Bollinger, James J Duderstadt, Jeffrey Lehman, Dennis Shields and Regents of the Univ MI for reassignment or alternatively for designating actions as companion cases with brief and proof of

mailing (lh) [Entry date 07/15/98] [Edit date 05/27/99]

* * *

7/23/98 29 RESPONSE by plaintiff Barbara Grutter to motion for reassignment [26-1] and for designating actions as companion cases [26-2] with affidavit and attachments (pd) [Entry date 05/27/99]

7/29/98 – REPLY by defendants Univ MI, Univ MI College Lit and James T. Duderstadt to response to motion for reassignment [26-1] and for designating actions as companion cases [26-2] with proof of mailing (pd) [Entry date 05/27/99] [Edit date 05/27/99]

* * *

7/31/98 31 MOTION by plaintiff to certify class and for bifurcation of liability and damage trials with brief, affidavit and proof of mailing (PP) [Entry date 08/04/98] [Edit date 05/27/99]

8/4/98 32 TRANSCRIPT taken on 7/31/98 of motion hearing (lh) [Entry date 08/04/98] [Edit date 05/27/99]

* * *

8/7/98 36 MEMORANDUM opinion and order by Judge Bernard A. Friedman denying motion for reconsideration of order [27-1] (DT) [Entry date 08/10/98] [Edit date 05/27/99]

* * *

8/17/98 42 MEMORANDUM opinion and order by Judge Bernard A. Friedman striking from

the docket the 8/8/98 opinion by Judges Feikens and Cook [35-1] denying motion for designating as companion cases by Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [26-2] with proof of mailing (ls) [Entry date 08/19/98] [Edit date 05/27/99]

* * *

9/15/98 51 RESPONSE by defendants to motion to certify class and for bifurcation of liability and damage trials [31-1] with exhibits A-F (pd) [Entry date 05/27/99]

9/21/98 52 ACKNOWLEDGEMENT from USCA of receipt of appeal notice and docket [47-1] [45-1] – appeal case # 98-2009 (DT) [Entry date 09/22/98]

* * *

9/28/98 56 REPLY by plaintiff Barbara Grutter to defendants response to motion to certify class and for bifurcation of liability and damage trials [31-1] with exhibits and proof of mailing (lh) [Entry date 09/30/98] [Entry date 05/27/99]

* * *

10/9/98 62 ACKNOWLEDGEMENT from USCA of receipt of appeal notice by intervening defendants [45-1] – appeal case # 98-2009 (ls) [Entry date 10/14/98] [Edit date 05/27/99]

* * *

10/22/98 – MOTION hearing held on motion to certify class and for bifurcation of liability and damage trials by Barbara Grutter [31-1] –

disposition: taken under advisement – Judge Bernard A. Friedman – Court Reporter: Joan Morgan (cd) [Entry date 10/23/98]

* * *

11/12/98 71 SUPPLEMENTAL brief by defendants to motion response [51-1], with attachments A-C and proof of mailing (PP) [Entry date 11/12/98] [Edit date 05/27/99]

* * *

12/3/98 73 SUPPLEMENTAL brief on class certification by plaintiff (PP) [Entry date 12/04/98]

* * *

12/29/98 77 SUPPLEMENTAL record of appeal notice by intervening defendants [45-1] consisting of: 1 volume(s) of pleadings 0 transcript(s) 0 deposition(s) sent to USCA – appeal case # 98-2009 (pleadings 54-76) (RH) [Entry date 12/29/98] [Edit date 05/27/99]

* * *

1/7/99 79 MEMORANDUM opinion and order by Judge Bernard A. Friedman granting motion to certify class and for bifurcation of liability damage trials by Barbara Grutter [31-1] (bk) [Entry date 01/08/99] [Edit date 05/27/99]

* * *

4/2/99 90 MOTION by defendants Lee Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI and Univ MI Law School to amend case caption to provide that the proper defendants are named with proof of mailing (lt) [Entry date 04/06/99] [Edit date 05/27/99]

4/2/99 91 ORDER by Judge Bernard A. Friedman granting motion to amend case caption to provide that the proper defendants are named by Univ MI Law School, Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [90-1] (lt) [Entry date 04/06/99] [Edit date 05/27/99]

* * *

5/3/99 94 MOTION by plaintiff for partial summary judgment on liability with brief (ls) [Entry date 05/04/99]

5/3/99 95 AFFIDAVIT by Kirk O. Kolbo in support of motion for partial summary judgment on liability by Barbara Grutter [94-1] (ls) [Entry date 05/04/99]

5/3/99 95 EXHIBITS filed by plaintiff in support of its motion for partial summary judgment on liability (ls) [Entry date 05/04/99]

* * *

5/3/99 97 MOTION by defendants for summary judgment with brief and proof of mailing (ls) [Entry date 05/04/99]

5/3/99 98 APPENDIX by defendants in support of their motion for summary judgment [97-1] Vol. 1 (ls) [Entry date 05/04/99] [Edit date 05/04/99]

5/3/99 99 APPENDIX by defendants to motion for summary judgment [97-1] Vol. 2 (ls) [Entry date 05/04/99]

5/3/99 100 APPENDIX by defendants to motion for summary judgment [97-1] (ls) [Entry date 05/04/99]

* * *

6/1/99 121 MEMORANDUM by plaintiff in opposition to motion for summary judgment by Lee Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI [97-1] (PP) [Entry date 06/02/99]

6/1/99 122 AFFIDAVIT of Kirk O. Kolbo and exhibits in support of motion response by Barbara Grutter [121-1] (PP) [Entry date 06/02/99]

* * *

6/7/99 125 RESPONSE by defendant Univ MI, defendant Dennis Shields, defendant Jeffrey Lehman, defendant Lee Bollinger to motion for partial summary judgment on liability by Barbara Grutter [94-1], with proof of mailing (RH) [Entry date 06/08/99]

6/8/99 127 NON-CERTIFIED copy of order from USCA granting appellants' motions to supplement the record and stay district court proceedings on the motions for summary judgment pending disposition of this appeal [0-0] – appeal case # 98-2009 (RH) [Entry date 06/09/99]

* * *

8/13/99 – SLIP opinion from USCA reversing and remanding the case for further proceedings, etc. – appeal case # 98-2009/2248. (see #97-75231, document #102) (cf) [Entry date 8/17/99]

* * *

8/16/99 130 ORDER by Judge Bernard A. Friedman granting motion to intervene as party defendant by Kimberly James [13-1] and

setting scheduling conference for 1:00 pm on 8/26/99 [EOD Date 8/17/99] (DT) [Entry date 08/17/99]

* * *

9/8/99 134 NON-CERTIFIED copy of order from USCA granting motion to vacate the court's order staying summary judgment proceedings in the district court [0-0] – appeal case # 98-2009 (ew) [Entry date 09/09/99]

9/15/99 135 MANDATE from USCA reversing and remanding the case for further proceedings – appeal case # 98-2009 (RH) [Entry date 09/22/99]

* * *

2/7/00 144 MOTION by defendants Univ MI, Lee Bollinger, Jeffrey Lehman and Dennis Shields for relief from order regarding class certification and bifurcation in light of subsequent authority with brief and proof of mailing (lh) [Entry date 02/09/00] [Edit date 02/09/00]

* * *

2/18/00 150 ANSWER by intervening defendants Law Students Aff, Coalition Defend Aff, Utd Equality Aff, Carol Scarlett, Oscar De La Torre, Melisa Resch, Winifred Kao, Meera Deo, Jasmine Abdel-Khalik, Russ Abrutyn, Scott Rowekamp, Norberto Salinas, Bernard Cooper, Kevin Pimentel, Julie Kerouac, Shannon Ewing, Jodi Marie Masley, Jaasi Munanka, Yolanda J. King, Paul Aleobua, Herbert Dowdell Jr., Mary Gibson, Karla Stephens-Dawson, Hoku Jeffrey, Vincent Kukua, Edward Vasquez, Arturo

Vasquez, Gerald Ramos, Irami Osei-Frimpong, Nora Cecilia Melendez, Ronald Cruz, Ashwana Carlisle, Heather Bergman, James Huang, Jessica Curtin, Julie Fry, Diego Bernal, Shalamarel Kevin Killough, Dena Fernandez, Shabatayah Andrich, Raymond Michael Whitlow, Jeanette Haslett, Kimberly James, Farah Mongeau to complaint [1-1] with proof of mailing (DT) [Entry date 02/25/00]

2/18/00 150 AFFIRMATIVE defenses by Law Students Aff, Coalition Defend Aff, Utd Equality Aff, Carol Scarlett, Oscar De La Torre, Melisa Resch, Winifred Kao, Meera Deo, Jasmine Abdel-Khalik, Russ Abrutyn, Scott Rowekamp, Norberto Salinas, Bernard Cooper, Kevin Pimentel, Julie Kerouac, Shannon Ewing, Jodi Marie Masley, Jaasi Munanka, Yolanda J. King, Paul Aleobua, Herbert Dowdell Jr., Mary Gibson Karla Stephens-Dawson, Hoku Jeffrey, Vincent Kukua, Edward Vasquez, Arturo Vasquez, Gerald Ramos, Irami Osei-Frimpong, Nora Cecilia Melendez, Ronald Cruz, Ashwana Carlisle, Heather Bergman, James Huang, Jessica Curtin, Julie Fry, Diego Bernal, Shalamarel Kevin Killough, Dena Fernandez, Shabatayah Andrich, Raymond Michael Whitlow, Jeanette Haslett, Kimberly James, Farah Mongeau (DT) [Entry date 02/25/00]

* * *

2/22/00 152 RESPONSE by intervening defendants Law Students Aff, Coalition Defend Aff, Utd Equality Aff, Carol Scarlett, Oscar De La Torre, Melisa Resch, Winifred Kao,

Meera Deo, Jasmine Abdel-Khalik, Russ Abrutyn, Scott Rowekamp, Norberto Salinas, Bernard Cooper, Kevin Pimentel, Julie Kerouac, Shannon Ewing, Jodi Marie Masley, Jaasi Munanka, Yolanda J. King, Paul Aleobua, Herbert Dowdell Jr., Mary Gibson Karla Stephens-Dawson, Hoku Jeffrey, Vincent Kukua, Edward Vasquez, Arturo Vasquez, Gerald Ramos, Irami Osei-Frimpong, Nora Cecilia Melendez, Ronald Cruz, Ashwana Carlisle, Heather Bergman, James Huang, Jessica Curtin, Julie Fry, Diego Bernal, Shalamarel Kevin Killough, Dena Fernandez, Shabatayah Andrich, Raymond Michael Whitlow, Jeanette Haslett, Kimberly James, Farah Mongeau to defendants' motion for relief from order regarding class certification and bifurcation in light of subsequent authority [144-1] with brief and proof of mailing (DT) [Entry date 02/25/00] [Edit date 02/25/00]

* * *

3/2/00 156 RESPONSE by plaintiff Barbara Grutter to Motion for relief from Order regarding class certification and bifurcation in light of subsequent authority by Univ MI, Lee Bollinger, Jeffrey Lehman, Dennis Shields [144-1] with brief and proof of service (bk) [Entry date 03/03/00]

* * *

3/9/00 160 REPLY by defendants to response to motion for relief from order regarding class certification and bifurcation in light of subsequent authority by Univ MI, Lee Bollinger, Jeffrey Lehman, Dennis Shields

[144-1] with proof of mailing (ew) [Entry date 03/13/00]

* * *

4/12/00 – MOTION hearing held on motion for relief from order regarding class certification and bifurcation in light of subsequent authority by Univ MI, Lee Bollinger, Jeffrey Lehman, Dennis Shields [144-1] – disposition: taken under advisement – Judge Bernard A. Friedman – Court Reporter: Allen Burnham (cd) [Entry date 04/13/00]

4/14/00 165 MEMORANDUM by defendant in support of motion for relief from order regarding class certification and bifurcation in light of subsequent authority [144-1] with proof of mailing (dh) [Entry date 04/18/00]

* * *

4/19/00 167 OPINION and order by Judge Bernard A. Friedman denying motion for relief from order regarding class certification and bifurcation in light of subsequent authority by Univ MI, Lee Bollinger, Jeffrey Lehman, Dennis Shields [144-1] [EOD Date: 4/20/00] (ls) [Entry date 04/20/00]

* * *

6/15/00 174 RE-NEWED motion by defendants Lee Bollinger, Jeffrey Lehman and Dennis Shields for summary judgment on grounds of qualified immunity (lh) [Entry date 06/20/00] [Edit date 06/20/00]

6/15/00 175 MEMORANDUM of law by defendants Lee Bollinger, Jeffrey Lehman and Dennis Shields in support of renewed motion for

summary judgment on grounds of qualified immunity [174-1] with proof of mailing (lh) [Entry date 06/20/00]

6/15/00 176 APPENDIX by Lee Bollinger, Jeffrey Lehman and Dennis Shields to motion for summary judgment on grounds of qualified immunity by Dennis Shields, Jeffrey Lehman, Lee Bollinger (Volume 1: Documents and Materials) [174-1] (lh) [Entry date 06/20/00] [Edit date 06/20/00]

6/15/00 177 APPENDIX by defendants Lee Bollinger, Jeffrey Lehman and Dennis Shields to motion for summary judgment on grounds of qualified immunity by Dennis Shields, Jeffrey Lehman, Lee Bollinger (Volume 2: Deposition Excerpts) [174-1] (lh) [Entry date 06/20/00]

6/15/00 178 APPENDIX by Lee Bollinger, Jeffrey Lehman and Dennis Shields to motion for summary judgment on grounds of qualified immunity by Dennis Shields, Jeffrey Lehman, Lee Bollinger (Volume 3: Expert Witness Reports) [174-1] (lh) [Entry date 06/20/00]

* * *

7/7/00 184 NOTICE by intervening defendants' of concurrence in and adoption of motion for summary judgment on grounds of qualified immunity by Dennis Shields, Jeffrey Lehman, Lee Bollinger [174-1] with proof of mailing (PP) [Entry date 07/10/00]

* * *

7/20/00 192 MEMORANDUM in opposition by plaintiff to motion for summary judgment on

grounds of qualified immunity by Dennis Shields, Jeffrey Lehman, Lee Bollinger [174-1] (PP) [Entry date 7/21/00]

7/20/00 193 AFFIDAVIT by plaintiff's attorney in support of motion response by Barbara Grutter [192 1], with exhibits A-Q. (PP) [Entry date 07/21/00]

* * *

8/11/00 198 REPLY by defendants Dennis Shields, Jeffrey Lehman, Lee Bollinger in support of their motion for summary judgment on grounds of qualified immunity [174-1] with attachment and proof of mailing (ls) [Entry date 08/18/00]

* * *

10/3/00 – CERTIFIED copy of order from USCA denying petitions to appeal or alternatively for relief in mandamus – appeal case # 00-0107/0109 (see document 192 in 97-75231) (dp) [Entry date 10/04/00] [Edit date 10/04/00]

* * *

10/10/00 216 MOTION by defendants for summary judgment with brief and proof of mailing (ew) [Entry date 10/10/00]

10/10/00 217 APPENDIX (Volume 1) by defendants in support of motion for summary judgment by Lee Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI [216-1] (ew) [Entry date 10/10/00]

10/10/00 218 APPENDIX (Volume 2) by defendants to motion for summary judgment by Lee

Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI [216-1] (ew) [Entry date 10/10/00]

10/10/00 219 APPENDIX (Volume 3) by defendants to motion for summary judgment by Lee Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI [216-1] (ew) [Entry date 10/10/00]

10/10/00 220 RENEWED MOTION by plaintiff Barbara Grutter for partial summary judgment on liability with brief, affidavit and proof of mailing (ew) [Entry date 10/10/00]

* * *

11/3/00 229 MEMORANDUM by plaintiff Barbara Grutter in opposition to motion for partial summary judgment on liability by Barbara Grutter [220-1] with proof of mailing (ew) [Entry date 11/03/00]

11/3/00 230 AFFIDAVIT of Kirk O. Kolbo and exhibits memorandum in opposition by Barbara Grutter [229-1] (ew) [Entry date 11/03/00]

* * *

11/6/00 233 MEMORANDUM by defendants in opposition to motion for partial summary judgment on liability by Barbara Grutter [220-1] with proof of mailing (ew) [Entry date 11/07/00]

* * *

11/21/00 240 RESPONSE by intervening defendants' to motion for partial summary judgment on liability by Barbara Grutter [220-1] with exhibits (RH) [Entry date 11/21/00]

* * *

12/11/00 253 APPENDIX (Volume I) by intervening defendants to brief in support of motion for summary judgment and [240-1] in opposition to the plaintiff's motion for summary judgment [240-1] (lh) [Entry date 12/13/00]

12/11/00 254 APPENDIX (Volume II) by intervening defendants to brief in support of defendants' motion for summary judgment [240-1] and in opposition to the plaintiff's motion for summary judgment [240-1] (lh) [Entry date 12/13/00]

12/11/00 255 APPENDIX (Volume III) by intervening defendants to brief in support of defendants' motion for summary judgment and [240-1] in opposition to the plaintiff's motion for summary judgment [240-1] (lh) [Entry date 12/13/00]

12/11/00 256 APPENDIX (Volume IV) by intervening defendants to brief in support of defendants' motion for summary judgment and [240-1] in opposition to the plaintiff's motion for summary judgment [240-1] (Filed Under Seal Pursuant to Protective Order) (lh) [Entry date 12/13/00]

* * *

12/20/00 262 APPENDIX – Volume V by intervening defendants' to brief in support of defendants motion for summary judgment and in opposition to the plaintiff's motion for summary judgment (not on docket). (PP) [Entry date 12/21/00]

12/20/00 263 APPENDIX – Volume VI by intervening defendants' to brief in support (not on docket) of defendants' motion for summary judgment and in opposition to the plaintiff's motion for summary judgment (PP) [Entry date 12/21/00]

12/20/00 264 APPENDIX – Volume VII by intervening defendants' to brief in support (not on docket) of defendants' motion for summary judgment and in opposition to the plaintiff's motion for summary judgment (PP) [Entry date 12/21/00]

12/20/00 265 APPENDIX – Volume VIII by intervening defendants' to brief in support (not on docket) of defendants' motion for summary judgment and in opposition to the plaintiff's motion for summary judgment (PP) [Entry date 12/21/00]

* * *

12/22/00 – MOTION hearing held on motion for partial summary judgment on liability by Barbara Grutter [220-1], motion for summary judgment by Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [216-1], motion for summary judgment on grounds of qualified immunity by Lee Bollinger, Jeffrey Lehman, Dennis Shields [174-1], motion for summary judgment by Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [97-1], motion for partial summary judgment on liability by Barbara Grutter [94-1] – disposition: taken under advisement – Judge Bernard A. Friedman – Court Reporter: Janice Coleman (cd) [Entry date 01/02/00] [Edit date 01/02/00]

12/28/00 268 ORDER by Judge Bernard A. Friedman taking motion for partial summary judgment on liability by Barbara Grutter

[220-1] under advisement, taking motion for summary judgment by Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [216-1] under advisement, taking motion for summary judgment on grounds of qualified immunity by Lee Bollinger, Jeffrey Lehman, Dennis Shields [174-1] under advisement, taking motion for summary judgment by Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger [97-1] under advisement, taking motion for partial summary judgment on liability by Barbara Grutter [94-1] under advisement, setting civil non-jury trial for 9:00 1/16/01 [EOD Date 12/28/00] (ew) [Entry date 12/28/00]

* * *

1/21/01 290 TRANSCRIPT taken on 12/22/00 of hearing on plaintiff's motion for summary judgment (ew) [Entry date 02/01/00]

* * *

3/27/01 311 FINDINGS of fact and conclusions of law by Judge Bernard A. Friedman (pd) [Entry date 11/13/02]

3/28/01 312 MOTION by defendant to stay injunction with brief, attachments, proof of mailing (dh) [Entry date 03/29/01]

* * *

3/30/01 314 APPEAL by defendants Board of Regents of the Univ MI, Dennis Shields, Jeffrey Lehman, Lee Bollinger of order 311 to USCA with proof of mailing – FEE: paid – Receipt #: 200415629 (dh) [Entry date 04/02/01]

4/3/01 315 PROOF of mailing of notice of appeal to USCA, counsel of record and court reporters (lb) [Entry date 04/03/01]

4/3/01 316 CERTIFIED copy of appeal notice by Lee Bollinger, Jeffrey Lehman, Dennis Shields, Univ MI [314-1] and docket transmitted to USCA (lb) [Entry date 04/03/01]

4/3/01 317 MEMORANDUM by plaintiff Barbara Grutter in opposition to defendants' motion to stay injunction [312-1] with proof of mailing (DT) [Entry date 04/03/01]

4/3/01 318 OPINION AND ORDER by Judge Bernard A. Friedman denying defendants' motion to stay injunction [312-1] [EOD Date: 4/3/01] (DT) [Entry date 04/03/01]

4/3/01 319 MOTION by intervening defendants for joinder in motion by intervening defendants [319-1] with proof of mailing (DT) [Entry date 04/04/01] [Edit date 01/30/02]

* * *

4/11/01 322 APPEAL by intervening defendants of order [311-1] to USCA with proof of service – FEE: PAID – Receipt #: 416242 (do) [Entry date 04/16/01]

4/13/01 321 NON-CERTIFIED copy of order from USCA granting motion to stay injunction pending appeal [0-0] – appeal case # 01-1447 (PP) [Entry date 04/16/01]

4/16/01 323 PROOF of mailing of notice of appeal to USCA and all counsel of record (do) [Entry date 04/16/01]

4/16/01 324 CERTIFIED copy of appeal notice by intervening defendants [322-1] and docket transmitted to USCA (do) [Entry date 04/16/01]

4/17/01 325 ACKNOWLEDGEMENT from USCA of receipt of appeal notice of appeal & docket [316-1] – appeal case # 01-1447 (PP) [Entry date 04/18/01]

4/19/01 326 TRANSCRIPT order form by defendant regarding appeal notice by defendants requesting transcript(s) of: 12/22/00, 1/16/01-2/16/01 – appeal case # 01-1447 (PP) [Entry date 04/20/01] [Edit date 05/09/01]

* * *

4/27/01 329 ACKNOWLEDGEMENT from USCA of receipt of appeal notice by intervening defendants [322-1] – appeal case # 01-1516 (lh) [Entry date 04/30/01]

4/27/01 330 TRANSCRIPT of hearing on plaintiff's motion for summary judgment on 12/22/00 (lh) [Entry date 04/30/01] [Edit date 05/09/01]

5/16/01 331 TRANSCRIPT taken on 1/16/01 of bench trial – Vol. 1 (DT) [Entry date 05/16/01]

5/16/01 332 TRANSCRIPT taken on 1/17/01 of bench trial Vol. 2 (DT) [Entry date 05/16/01]

5/16/01 333 TRANSCRIPT taken on 1/18/01 of bench trial – Vol. 3 (DT) [Entry date 05/16/01]

5/16/01 334 TRANSCRIPT taken on 1/19/01 of bench trial Vol. IV (DT) [Entry date 05/16/01]

5/16/01 335 TRANSCRIPT taken on 1/22/01 of bench trial Vol. 5 (DT) [Entry date 05/16/01]

5/16/01 336 TRANSCRIPT taken on 1/23/01 of bench trial Vol. 6 (DT) [Entry date 05/16/01]

5/16/01 337 TRANSCRIPT taken on 1/24/01 of bench trial Vol. 7 (DT) [Entry date 05/16/01]

5/16/01 338 TRANSCRIPT taken on 2/6/01 of bench trial Vol. 8 (DT) [Entry date 05/16/01]

5/16/01 339 TRANSCRIPT taken on 2/7/01 of bench trial Vol. 9 (DT) [Entry date 05/16/01]

5/16/01 340 TRANSCRIPT taken on 2/8/01 of bench trial Vol. 10 (DT) [Entry date 05/16/01]

5/16/01 341 TRANSCRIPT taken on 2/9/01 of bench trial Vol. 11 (DT) [Entry date 05/16/01]

5/16/01 342 TRANSCRIPT taken on 2/10/01 of bench trial Vol. 12 (DT) [Entry date 05/16/01]

5/16/01 343 TRANSCRIPT taken on 2/12/01 of bench trial Vol. 13 (DT) [Entry date 05/16/01]

5/16/01 344 TRANSCRIPT taken on 2/15/01 of bench trial Vol. 14 (DT) [Entry date 05/16/01]

5/16/01 345 TRANSCRIPT taken on 1/16/01 of bench trial Vol. 15 (DT) [Entry date 05/16/01]

6/15/01 346 STIPULATION by parties regarding trial exhibits with attachments and proof of mailing [EOD Date: 6/18/01] (dh) [Entry date 06/18/01]

6/20/01 347 TRANSCRIPT taken on 01/16/01, 01/17/01, 01/18/01, 01/19/01, 01/22/01, 01/23/01, 01/24/01, 02/06/01, 02/07/01, 02/08/01, 02/09/01, 02/12/01, 02/15/01, 02/16/01, of transcript corrections (dh) [Entry date 06/22/01]

6/22/01 348 NOTICE by plaintiff's counsel of change of address with proof of mailing (DT) [Entry date 06/25/01]

8/2/01 349 RECORD of appeal notice by intervening defendants [322-1] consisting of: 40 volume(s) of pleadings 17 transcript(s) 0 deposition(s) transmitted to USCA – appeal case # 01-1447, 01-1516 (ew) [Entry date 08/02/01]

8/13/01 350 ACKNOWLEDGEMENT from USCA of receipt of appeal record [349-1] – appeal case # 01-1447, 01-1516 (DT) [Entry date 8/14/01]

5/16/02 351 NON-CERTIFIED COPY OF JUDGMENT from USCA reversing and vacating – appeal case # 01-1447/1516 with attachment of opinion (dh) [Entry date 05/17/02]

* * *

6/11/02 353 MANDATE from USCA reversing/vacating case [0-0] – appeal case # 01-1447 (ew) [Entry date 06/12/02]

6/11/02 354 MANDATE from USCA reversing/vacating case [0-0] – appeal case # 01-1516 (ew) [Entry date 06/12/02]

* * *

9/16/02 357 NOTICE that petition for a writ of certiorari was filed and placed on docket (ew) [Entry date 09/17/02]

12/11/02 358 ORDER from the U.S. Supreme Court granting writ of certiorari regarding [EOD Date 12/12/02] 01-1447/1516 (DT) [Entry date 12/12/02]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER)
for herself and all others similarly situated,)
Plaintiff,)
v.) Civil Action # 97-75928
LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, REGENTS OF THE UNIVERSITY OF MICHIGAN, AND THE UNIVERSITY OF MICHIGAN LAW SCHOOL) BERNARD A. FRIEDMAN
MAGISTRATE JUDGE MORGAN
COMPLAINT
CLASS ACTION
(Filed Dec. 3, 1997)
Defendants.)

Nature of the Action

1. This is a class action brought for violations and threatened violations of the rights of plaintiff and the class she represents to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and for racial discrimination in violation of 42 U.S.C. §§ 1981, 1983 and 2000d *et seq.* Plaintiff seeks declaratory and injunctive relief and compensatory and punitive damages in an amount to be proven at trial.

Jurisdiction and Venue

2. This Court has jurisdiction of the action under 28 U.S.C. §§ 1331 and 1343. This action arises under the Fourteenth Amendment to the United States Constitution,

and under federal laws, 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*

3. Venue in this Court is proper under 28 U.S.C. § 1391 and this Court has personal jurisdiction over the defendants in this matter because the events giving rise to this claim occurred, and will occur, in this district.

Plaintiff

4. Barbara Grutter is, and at all times relevant to this litigation was, a resident of the State of Michigan. She applied in 1996 for admission to the University of Michigan Law School (the "Law School") in the academic year 1997-98. After being placed on a "wait list," she was apprised by the Law School, by a letter dated June 25, 1997, that her application had been rejected. She has not attended any other law school, but still desires to attend the Law School and become a lawyer.

Defendants

5. The Regents of University of Michigan ("the University") is the governing body of the University of Michigan, a public educational institution in the State of Michigan. The University of Michigan Law School ("Law School") is a school under the supervisory authority of the University.

6. On or around February 1, 1997, Lee Bollinger became the President of the University. Prior to that time he was Dean of the Law School, and was responsible for the initial implementation of the admissions policies that were used at least from 1995 until the present and which led to plaintiff being treated unequally. As President,

Bollinger has responsibility for all of the admissions programs at the University of Michigan, including those at the Law School. He is being sued in his individual and official capacities.

7. Jeffrey Lehman is Bollinger's successor as Dean of the Law School. As Dean, he continued Bollinger's admissions policies and was responsible for the admissions policies that were used in 1997 and which led to plaintiff being treated unequally. As Dean, Lehman has responsibility for the admissions program at the Law School. He is being sued in his individual and official capacities.

8. Dennis Shields is the Dean of Admissions at the Law School and was responsible for the admissions policies that were used at least from 1995 until the present and which led to plaintiff being treated unequally. He is being sued in his individual and official capacities.

9. Unless enjoined, defendants will continue to approve of, and implement, an admissions system for the Law School substantially the same as the system described below.

Class Action Allegations

10. Plaintiff brings this action as a class action pursuant to Rules 23(a), 23(b), and 23(c)(4)(A) of the Federal Rules of Civil Procedure on behalf of a class consisting of all students who:

a. applied for and were not granted admission to the Law School for all academic years since 1995-98 through the entry of a judgment in this action or are ready and able to apply to the Law School; and

b. are members of those racial or ethnic groups, including Caucasian, that defendants have treated less favorably in considering their applications for admission to the Law School.

11. Plaintiff seeks to maintain this class, pursuant to Rules 23(b) and 23(c)(4), on the issues of whether defendants engaged in unlawful discrimination and whether defendants should be enjoined from continuing their discriminatory policies.

12. The class is so numerous that joinder of all its members is impracticable. Defendants receive thousands of applications for admission each year for the Law School and will continue to do so in the future. Plaintiff does not know addresses or the precise number of rejected applicants, but can ascertain this information from the defendants' records.

13. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class. Among the questions of law and fact common to the class is whether defendants violated the Fourteenth Amendment to the United States Constitution, and federal laws, 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*, by discriminating and by conspiring to discriminate against certain applicants on the basis of race, and whether they will continue to do so.

14. Plaintiff's claims are typical of the claims of the members of the class and she is an adequate representative of the class. Plaintiff and members of the class have sustained damages, or will sustain damages in the future if defendants' policies are not enjoined, because of defendants' unlawful activities alleged herein. Plaintiff has

retained counsel competent and experienced in race discrimination litigation and intends to prosecute this action vigorously. Plaintiff will fairly and adequately protect the interests of the class.

15. A class action is superior to other available means for the fair and efficient adjudication of the controversy.

Facts

16. The University is a State-run university which also receives federal funds. The Law School is an educational unit part of, operated by, and responsible to, the University. It also receives federal funds.

17. The Law School Admissions form asks each applicant to disclose his or her race.

18. Plaintiff identified her race by checking the box next to "white."

19. Defendants used the race information provided by plaintiff and other applicants to determine who would be admitted to the Law School.

20. Defendants used different admissions standards based on each student's self-identified race. As a result, students from favored racial groups had a significantly greater chance of admission than students with similar credentials from disfavored racial groups.

21. Applicants from disfavored racial groups were not compared directly to applicants from favored racial groups.

22. Plaintiff, categorized as white, was not in one of the favored racial groups that benefitted from less stringent admissions standards.

23. Defendants did not merely use race as a "plus" factor or as one of many factors to attain a diverse student body. Rather, race was one of the predominant factors (along with scores on the Law School Admissions Test and undergraduate grade point averages) used for determining admission.

24. Defendants had no compelling interest to justify their use of race in the admissions process, and were not motivated by either an interest in educational diversity or by a desire to remedy the present effects of any past discrimination.

25. Assuming *arguendo* that defendants had a compelling interest for which they used race in their admissions criteria, defendants did not consider, and never employed, any race neutral alternative to achieve that interest.

26. As a result of defendants' racially discriminatory procedures and practices, plaintiff's application was rejected. Plaintiff suffered humiliation, emotional distress, and pain and suffering as a consequence of her application being rejected. She also suffered humiliation, emotional distress, and pain and suffering upon learning that defendants had discriminated against her on the basis of her race.

27. As a result of defendants' discrimination, plaintiff has never attended law school, and has suffered economic damages resulting from her inability to proceed

with her planned career as a lawyer. Plaintiff still desires to attend the Law School, and to become a lawyer.

28. If not enjoined, defendants will continue to use race in selecting students for the Law School.

FIRST CLAIM

29. Plaintiff repeats and realleges the allegations and averments of paragraphs 1-28 as if fully set forth herein.

30. Bollinger acted under color of law in implementing policies that eventually led the Law School to deny plaintiff equal protection of the laws, and to discriminate against her on the basis of race, in violation of 42 U.S.C. §§ 1981 and 1983. Lehman and Shield acted under color of law in implementing the policy in 1997 that led the Law School to deny plaintiff equal protection of the laws, and to discriminate against her on the basis of race, in violation of 42 U.S.C. §§ 1981 and 1983.

31. Bollinger, Lehman, and Shields violated plaintiff's clear and well-established Constitutional right to receive the same consideration for admissions as applicants of other races.

SECOND CLAIM

32. Plaintiff repeats and realleges the allegations and averments of paragraphs 1-31 as if fully set forth herein.

33. The University and the Law School, as recipients of federal funds, discriminated against plaintiff on the basis of her race, color, and/or ethnicity in violation of 42 U.S.C. § 2000d *et seq.*

RELIEF

WHEREFORE, plaintiff demands judgment:

A. Declaring that defendants violated her rights to nondiscriminatory treatment under the Fourteenth Amendment and 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*

B. Enjoining defendants from continuing to discriminate on the basis of race in violation of the Fourteenth Amendment;

C. Awarding her compensatory and punitive damages in an amount to be proven at trial;

D. Requiring the Law School to offer her admission;

E. Awarding attorney's fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

F. Providing any other relief that is appropriate and just.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER for herself and all others similarly situated, Plaintiff, v. LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, REGENTS OF THE UNIVERSITY OF MICHIGAN, and THE UNIVERSITY OF MICHIGAN LAW SCHOOL Defendants.	) Civil Action No. 97-75928) Hon. Bernard Friedman) Hon. Virginia Morgan

ANSWER

(Filed Dec. 22, 1997)

Defendants Lee Bollinger, Jeffrey Lehman, Dennis Shields, and Regents of the University of Michigan hereby answer the Complaint. Defendants treat named defendant "The University of Michigan Law School" as referring to the "Regents of the University of Michigan," the body corporate with the authority to be sued under law, and respond to the Complaint on that basis. Accordingly, the term "defendants" as used in this Answer refers to Bollinger, Lehman, Shields and the Regents of the University of Michigan.

Except as hereinafter expressly admitted, qualified, or otherwise admitted, defendants specifically deny each and

every allegation, statement, matter and thing contained in the Complaint. Defendants respond to the numbered allegations in the Complaint on knowledge to themselves and on information and belief as to other matters, as follows:

1. No response is required to the allegations in paragraph 1 of the Complaint, which are the plaintiff's characterization of her claims.

2. Defendants deny the allegations in paragraph 2 of the Complaint.

3. Defendants admit that, to the extent that the Court has subject-matter jurisdiction, venue is proper in this Court. Defendants deny all of the remaining allegations in paragraph 3 of the Complaint.

4. Defendants state that, on or about December 10, 1996, the University of Michigan Law School received an application for admission for the fall 1997 term from Barbara Grutter. On April 18, 1997, the University of Michigan Law School sent a letter to Grutter informing her that she was being placed on a "waiting list." On June 25, 1997, the University of Michigan Law School sent a letter to Grutter informing her that her application was rejected. All defendants lack knowledge and information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 4 of the Complaint.

5. Defendants admit the allegations in the first sentence of paragraph 5 of the Complaint. Defendants do not understand the second sentence of paragraph 5 of the Complaint as pleaded, but state that the Law School is a school of the University of Michigan.

6. Defendants admit the allegations in the first sentence of paragraph 6 of the Complaint. In response to the second sentence, defendants state that immediately before becoming president of the University, Bollinger served as Provost of Dartmouth University. Defendants further state that prior to that, Bollinger served as dean of the Law School, and in that capacity had oversight responsibility for the admissions policy in place during his tenure as dean. Defendants further state that as president of the University, Bollinger now has oversight responsibility for the Law School's admissions policy. Defendants deny that the Law School's admissions policy led to plaintiff being treated unequally. Defendants admit that plaintiff purports to sue Bollinger in his individual and official capacities.

7. Defendants admit the allegations in the first sentence of paragraph 7 of the Complaint. In response to the second sentence, defendants state that the Law School's admission policy is substantially the same as the policy in place when Lehman became dean of the Law School, and deny that such policy led to plaintiff being treated unequally. Defendants further state that as dean of the Law School, Lehman has oversight responsibility for the Law School's admissions policies. Defendants admit that plaintiff purports to sue Lehman in his individual and official capacities.

8. Defendants state that Shields is an Assistant Dean and Director of Admissions at the Law School, and has responsibility for carrying out the Law School's admissions policy. Defendants deny that the Law School's admissions policies led to the plaintiff being treated unequally. Defendants admit that the plaintiff purports to sue Shields in his individual and official capacities.

9. Defendants state that the Complaint inaccurately describes the University of Michigan Law School's admissions process, and therefore that no response is required. To the extent that a response is deemed necessary, defendants state that they do have a current intention to continue using race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.

10. Defendants admit that plaintiff purports to bring this action as a class action. No response is necessary to the plaintiff's characterization of her claims in the remainder of paragraph 10 of the Complaint.

11. Defendants admit that plaintiff seeks to maintain a class. No response is necessary to the plaintiff's characterization of her claims in the remainder of paragraph 11 of the Complaint.

12. Defendants admit that the University of Michigan Law School receives thousands of applications for admission each year, and that some of the names and addresses of rejected applicants may be obtained from files maintained by the Law School's Admissions Office. Defendants deny all of the remaining allegations in paragraph 12 of the Complaint.

13. Defendants deny the allegations in paragraph 13 of the Complaint.

14. Defendants deny the allegations in paragraph 14 of the Complaint, except that defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations regarding the competence and experience of plaintiff's counsel.

15. Defendants deny the allegations in paragraph 15 of the Complaint.

16. Defendants state that the University of Michigan is an entity created by the Michigan State Constitution. Defendants admit that the University of Michigan, which includes the University of Michigan Law School, receives federal funds.

17. Defendants admit that the Application to the University of Michigan's J.D. Program permits applicants to indicate their race.

18. Defendants admit that on her application, plaintiff indicated that her racial or ethnic identification was "White American.".

19. Defendants state that the University of Michigan Law School uses race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Defendants deny all of the remaining allegations in paragraph 19 of the Complaint.

20. Defendants state that the University of Michigan Law School applies rigorous admissions standards to all applicants; and that all admitted students are fully qualified to succeed at the Law School. Defendants further state that the University of Michigan Law School uses race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Defendants deny all of the remaining allegations in paragraph 20 of the Complaint.

21. Defendants deny the allegations in paragraph 21 of the Complaint.

22. Defendants admit that plaintiff is not a member of an underrepresented minority group and that her race was not a factor that enhanced the University of Michigan Law School's consideration of her application. Defendants deny all of the remaining allegations in paragraph 22 of the Complaint.

23. Defendants admit that the University of Michigan Law School uses race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Defendants deny all of the remaining allegations of paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint states a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, defendants deny the allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations in paragraph 25 of the Complaint.

26. Defendants deny the allegations in the first sentence of paragraph 26 of the Complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the other allegations in paragraph 26 of the Complaint.

27. Defendants deny the allegations in the first sentence of paragraph 27 of the Complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the remainder of paragraph 27 of the Complaint.

28. Defendants admit that the University of Michigan Law School has a current intention to continue to use race as a factor in admissions, as part of a broad array of

qualifications and characteristics of which racial or ethnic origin is but a single though important element. Defendants deny all of the remaining allegations in paragraph 28 of the Complaint.

RESPONSE TO PLAINTIFF'S FIRST CLAIM

29. Defendants repeat their responses to the allegations of paragraphs 1-28 of the Complaint as set forth above.

30. Paragraph 30 sets forth a conclusion of law to which no response is required. To the extent a response is required, defendants deny the allegations in paragraph 30 of the Complaint.

31. Paragraph 31 sets forth a conclusion of law to which no response is required. To the extent a response is required, defendants deny the allegations in paragraph 31 of the Complaint.

RESPONSE TO PLAINTIFF'S SECOND CLAIM

32. Defendants repeat their responses to the allegations of paragraphs 1-31 of the Complaint as set forth above.

33. Defendants state that the University of Michigan is an entity created by the Michigan State Constitution. Defendants admit that the University of Michigan, which includes the Law School, receives federal funds. Defendants deny the remaining allegations in paragraph 33 of the Complaint.

No response is required to the remainder of the Complaint, which sets forth plaintiff's prayer for relief. To

the extent that a response is required, defendants deny the remaining allegations in the Complaint.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses based on their current knowledge and information.

1. The Complaint fails to state a claim upon which relief may be granted.

2. This Court lacks subject-matter jurisdiction over the Complaint because the plaintiff lacks standing.

3. Defendants Bollinger, Lehman, and Shields did not violate plaintiff's clearly established rights, and are therefore qualifiedly immune from suit.

4. This Court lacks subject-matter jurisdiction over the Regents of the University of Michigan, and over Bollinger, Lehman and Shields in their official capacities, all of whom are immune from suit in federal court by the doctrine of sovereign immunity.

5. Plaintiff's claims for injunctive relief are barred by the doctrine of mootness.

6. Plaintiff has failed to mitigate her damages, if any.

7. Plaintiff's claims are barred by the doctrine of laches.

8. The University of Michigan Law School is an improper defendant. The Regents of the University of Michigan is the body corporate with the authority to be sued under law.

9. Defendants state that they assert these affirmative defenses based upon information presently available and in order to avoid waiver. Defendants reserve the right to withdraw any of these affirmative defenses or to assert additional affirmative defenses as further information becomes available.

Wherefore, defendants pray for a judgment dismissing the Complaint with prejudice and awarding them the costs and disbursements of this action, together with attorneys' fees, and such additional relief as the Court may deem just and proper.

Respectfully submitted,

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Dated: December 22, 1997

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA GRUTTER,

Plaintiff,

vs.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, REGENTS OF THE UNIVERSITY OF MICHIGAN, and THE UNIVERSITY OF MICHIGAN LAW SCHOOL,

Defendants.
_____/

Civil Action No.
97-CV-75928-DT

HON.
BERNARD A.
FRIEDMAN

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND BIFURCATION

This matter is presently before the court on plaintiff's motion for class certification and bifurcation of the liability and damages phases of the trial. The motions have been fully briefed, and the court has heard oral argument. For the reasons stated below, the court shall grant the motion.

Plaintiff Barbara Grutter alleges that she is white and that in 1996 she applied for admission to The University of Michigan Law School. At first she was placed on a waiting list, but in June 1997 her application was rejected. Plaintiff alleges that her application was rejected because the law school uses race as a "predominant" factor, giving minority applicants "a significantly greater chance of admission than students with similar credentials from disfavored racial groups." Complaint, ¶¶ 20, 23. In their

answer to the complaint, defendants "state that they do have a current intention to continue using race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." Answer, ¶¶ 9, 23.

Plaintiff asserts two claims. First, she claims that defendants discriminated against her on the basis of her race, thereby violating her rights to equal protection under the Fourteenth Amendment. This claim is brought under 42 U.S.C. §§ 1981 and 1983. Second, plaintiff claims that defendants violated a federal statute, 42 U.S.C. § 2000d, which prohibits recipients of federal funds from discriminating on the basis of race. For relief, plaintiff seeks a declaratory judgment to the effect that her rights were violated; an injunction prohibiting racial discrimination in admissions; compensatory and punitive damages; an order requiring defendants to admit her to the law school; and attorney fees and costs.

Plaintiff's Motion for Class Certification

In this motion, plaintiff seeks to certify a class consisting of all persons who:

> (A) applied for and were not granted admission to the University of Michigan Law School for the academic years since (and including) 1995 until the time that judgment is entered herein; and
>
> (B) were members of those racial or ethnic groups, including Caucasian, that Defendants treated less favorably in considering their applications for admission to the Law School.

The motion is governed by Fed. R. Civ. P. 23. The relevant provisions of this rule state:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

> (1) the prosecution of separate actions by or against individual members of the class would create a risk of
>
> (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; . . .

For plaintiffs motion to be granted, all four of the requirements of Rule 23(a) must be met; and, in addition,

the case must come within at least one of the "class actions maintainable" described in Rule 23(b). *See Sprague v. General Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998) (*en banc*). Further, "[t]he party seeking the class certification bears the burden of proof." *In re American Med. Sys., Inc.*, 75 F.3d 1069,1079 (6th Cir. 1996).

Plaintiff argues that all of the prerequisites of Rule 23(a) are met, and that the case is maintainable as a class action under Me 23(b)(1) and (2). Defendants make a weak argument that some of the 23(a) prerequisites are not met, and a somewhat stronger argument that the case does not properly fall within 23(b)(1) or (2). Having considered all of the parties' arguments, the court is persuaded that class certification is appropriate in this case.

Rule 23(a)

The numerosity requirement of Rule 23(a)(1) inquires into the impracticability of joining; all class members. *See In re American Med. Sys., Inc.*, 75 F.3d at 1979. This requirement is obviously met in the present case, as the proposed class could have thousands of members. In the class of 1998, for example, there were 4,073 applicants, of whom 1,059 were accepted and 3,014 were rejected. Even if only one-half of the rejected applicants fall within the proposed class, there would be over 1,500 class member for each academic year. At the moment, there are four such years in question (1995-96, 1996-97, 1997-98, and 1998-99 With over 6,000 potential class members, there is no question that joinder would be impracticable and that the numerosity requirement is satisfied.

The commonality requirement of Rule 23(a)(2) "is qualitative rather than quantitative, that is, there need be

only a single issue common to all members of the class." *In re American Med. Sys, Inc.*, 75 F.3d at 1080, *quoting* 1 H. Newberg & A. Conte, *Newberg on Class Actions* § 3.10. This requirement is also clearly met in this case. Plaintiffs claim is typical of – in fact, it is completely the same as – those of the class members. Plaintiff, like all of the proposed class members, claims that the law school's admission policy racially discriminates against non-minority applicants.

The typicality requirement of Rule 23(a)(3) "determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct" *In re American Med. Sys., Inc.*, 75 F.3d at 1082, *quoting Newberg on Class Actions* § 3.13. The requirement is satisfied "if the claims or defenses of the representatives and the members of the class stem from a single event or are based on the same legal or remedial theory." 7A C. Wright & A. Miller, *Federal Practice and Procedure* § 1764, p. 243 (1986).

Defendants argue that plaintiff should not be permitted to represent the class until after she has shown that she would not have been rejected but for her race. In other words, if plaintiff would not have been admitted regardless of her race, she was not "injured" by the law school's admission policy, and in this event her situation would not be "typical" of those non-minority applicants who would have been admitted under a race-neutral procedure. Defendants therefore argue that the court should defer ruling on the class certification issue until after plaintiff has proven causation in her own case. Plaintiff correctly points out that defendants would have her prove the merits of her case at an improperly early stage of the

litigation. Class certification is a procedural device for aligning similarly situated parties, and its application should not be contingent on the class representative proving the substantive merit of the underlying claim. In the present case, plaintiff and the proposed class members all have the same claim, based on the same legal theory and stemming from defendants' use of the same admissions policy. The typicality requirement is clearly met.[1]

For similar reasons, plaintiff is also an adequate representative of the class, as required by Rule 23(a)(4). The Sixth Circuit has indicated that this requirement has two components: "1) that the representatives must have common interests with unnamed class members, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *In re American Med. Sys., Inc.* 75 F.3d at 1083, *quoting Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976). Here, defendants repeat their argument that plaintiff does not have a "common interest" with the class until she shows that she would have been admitted under a race-neutral admissions policy. Again, however, defendants' argument fails because the adequacy of plaintiff's representation does not depend on the underlying merits of her claim. The legal issue is the same for plaintiff and all class members. Additionally, the court is persuaded that plaintiff, through competent counsel, will vigorously prosecute the class claims.

[1] In addition, neither plaintiff nor any of the class members need prove that they would have been admitted. As noted below, if the admissions policy is unconstitutional, then all non-minority applicants who were rejected have a claim for at least nominal damages.

For these reasons, the court concludes that plaintiff has satisfied all of the requirements of Rule 23(a) – numerosity, typicality, commonality, and adequacy of representation.

Rule 23(b)

The next issue is whether the case qualifies as one of the "class actions maintainable" under Rule 23(b)(1)(A), 23(b)(1)(B), or 23(b)(2). Plaintiff need only show that the case falls within one of these categories in order for her motion to prevail.

Rule 23(b)(1)(A)

As noted above, a class action is maintainable under Rule 23(b)(1)(A) if "the prosecution of separate actions by . . . individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class."

This standard clearly is met in the present case. If the class members would prosecute individual claims, before different courts or before different judges of this court, there would be a "risk of inconsistent or varying adjudications." Some courts might find defendants' admission policy unconstitutional, while others might uphold the policy. Different courts might find the policy to be unconstitutional for different reasons. And different courts might order different remedies. For example, some courts might find it unconstitutional for race to be used at all and order that future applications be reviewed without any

regard to race, while others might allow race to be considered but in a less prominent way than is now the case.

Defendants argue that this case does not qualify under Rule 23(b)(1)(A), but their arguments are quite unpersuasive. First, defendants argue that Rule 23(b)(1)(A) does not apply to cases in which damages are sought, as this rule addresses the scenario where different results in different cases would subject defendants to "incompatible standards of conduct." Defendants argue that plaintiff has no standing to seek injunctive relief, and that therefore only her claim for damages remains.

This argument fails because plaintiff clearly does have standing to seek injunctive relief. Defendants rely on a line of cases holding that a plaintiff may not seek injunctive or declaratory relief unless there is a substantial risk that plaintiff will again be subjected to the same type of harm she suffered in the past. The leading case is *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), in which the Supreme Court held that plaintiff could not seek an injunction preventing the Los Angeles police department from using choke holds. A choke hold was used on plaintiff once, but there was no likelihood that he would ever be subjected to one again in the future. The present case bears no resemblance to *Lyons*. Plaintiff Grutter says that she would still apply to the law school, if she thought her application would be reviewed in a race-neutral fashion. If she proves that defendants' policy is unconstitutional, then she would be entitled to a declaration and an injunction in order to prevent defendants from violating her Fourteenth Amendment rights when she reapplies for admission.

Second, defendants argue that Rule 23(b)(1)(A) does not apply because there is no risk of "incompatible standards" being imposed by different courts. Defendants acknowledge that some courts might find the policy constitutional, while others might reach the opposite conclusion. However, defendants see no possibility that they might be placed in a position where incompatible or conflicting orders would be issued. Defendants also argue that if there is such a risk, they should be permitted to assume the risk. This approach jeopardizes judicial economy. If the class is not certified, the constitutionality of defendants' admissions policy could be relitigated repeatedly in many individual lawsuits. Judicial resources should be used efficiently. The constitutionality of defendants' admission policy should be determined in a single proceeding, not in a long procession of individual actions in various courts.

Rule 23(b)(1)(B)

Certification is appropriate under Rule 23(b)(1)(B) if "the prosecution of separate actions by ... individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not to the adjudications or substantially impair or impede their ability to protect their interests."

Defendants correctly argue that this subsection of Bade 23(b) does not apply in the present case. Rule 23(b)(1)(B) "allows class actions to be brought in cases in which separate suits might have undesirable effects on the class members, rather than on the opposing party."

Federal Practice and Procedure § 1771 p. 437. Typically, such cases involve "class members [who] have claims against a fund that may prove insufficient to satisfy all of them." *Id.* at 441. In "limited fund" or "common fund" cases, the class members assert similar claims against a limited amount of money, or against a defendant with limited resources. The danger is that some plaintiffs will collect, while others will not, unless all claims are handled in a single proceeding.

This is not a "limited fund" case. Plaintiff is seeking primarily declaratory and injunctive relief, not damages. She does not contend that the law school would be unable to pay any damages which might eventually be awarded to the class members. Plaintiff argues that the "limited fund" rationale should be applied here due to the limited number of applicants who can be accepted.

Plaintiff's argument is unpersuasive. Aside from the lack of supporting case authority, the problem with this argument is that it would be impossible for the court to order that the limited number of law school seats be divided among the members of the class. In cases where the class members are asserting similar claims against a limited fund, the court can order that the fund be divided pro rata among the class members. This cannot be done in the present case because the "limited resources" must be divided among all applicants, not just the class members; and whether a seat is awarded to a particular applicant will depend on individual consideration. This case simply does not lend itself to "limited fund" analysis.

Rule 23(b)(2)

Finally, a class action is maintainable under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

This subdivision of Rule 23(b) is the one which applies most directly to the present case. Plaintiff's claim is that defendants' admissions policy is racially discriminatory. If this claim is correct, then defendants have acted in a way "generally applicable to the class" and an injunction and/or declaration applicable to all non-minority law school applicants would be appropriate.

Defendants make a number of arguments as to why the court should not certify under this subdivision. Again, however, the arguments are quite unpersuasive. Defendants' main argument is that certification under Rule 23(b)(2) is appropriate only when the class seeks primarily injunctive relief, and the proposed class does not seek injunctive relief. The first part of defendants' argument is correct, as both the plain wording of rule, and the case law, clearly indicate that Rule 23(b)(2) applies to cases where injunctive or declaratory relief is sought.

It is the second part of defendants' argument which breaks down. Plaintiff proposes to certify a class of those who "applied for and were not granted admission to the University of Michigan Law School for the academic years since (and including) 1995 until the time that judgment is entered herein." Clearly, the class seeks relief not only on behalf of those who applied in the past, but also on behalf of those who will apply in the future. Defendants argue

that those who have applied in the past may seek only damages. The argument also fails because the class includes future applicants and defendants ignore the possibility that past applicants may reapply in the future. Plaintiff Grutter testified specifically at her deposition that she would reapply if the law school would review her application without considering her race.

Defendants also argue that plaintiff, and the proposed class, seek "primarily monetary damages," not injunctive relief. Defendants point to the facts that plaintiff seeks damages for emotional injury and has demanded a jury trial, which presupposes a claim for money damages. However, the mere fact that plaintiff has included in her complaint a claim for money damages, does not begin to demonstrate that the claim *primarily* seeks damages. To the contrary, at her deposition plaintiff indicated that she is primarily interested in obtaining injunctive and declaratory relief.

Defendants also argue that plaintiff, and the proposed class, lack standing to seek any injunctive relief because they have "no specific present intention to seek future admission to the Law School." Here defendants rely on the line of cases, beginning with *Lyons*, which hold that a plaintiff may not seek an injunction to enjoin a practice which does not threaten plaintiff with immediate and irreparable injury. Defendants correctly note that plaintiff Lyons was not permitted to seek an injunction enjoining the Los Angeles police department from using choke holds, because there was no reasonable likelihood that plaintiff would be subjected to a choke hold a second time. The present case is different. Plaintiff has testified that she *will apply* to the law school if the admissions policy is changed. And the proposed class includes those who will

apply in the future – "until the time that judgment is entered herein."

The court concludes that this case is maintainable as a class action under Rule 23(b)(1)(A) and 23(b)(2), but not under Rule 23(b)(1)(B). As all of the prerequisites of Rule 23(a) are also satisfied, the court shall grant plaintiff's motion for class certification.

Plaintiffs Motion for Bifurcation

Plaintiff also asks that the court bifurcate the trial into liability and damages phases. The first phase would determine whether the admissions policy is unconstitutional and whether injunctive and/or declaratory relief should be awarded. The second phase would determine the amount of any damages which should be awarded, if any, to individual class members.

Defendants agree that the trial should be bifurcated into liability and damages phases. However, defendants believe that the issue of "causation" should be decided in the liability phase. Defendants appear to be arguing that there is no need to address the matter of damages for those class members who were not "injured" by the admissions policy – that is, those members who would not have been admitted even under a race-neutral policy.

In reply, plaintiff correctly argues that defendants' use of the word "causation" in this context is incorrect. Any applicant who was rejected under an unconstitutional admissions policy has a cause of action, as least for nominal damages. In *Northeastern Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993), the Supreme Court stated:

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

Similarly, in *Jordan v. Dellway Villa of Tenn.*, 661 F.2d 588, 594 (6th Cir. 1981), the Sixth Circuit held that all African Americans who applied for an apartment, and who were rejected because of their race, could sue for at least nominal damages "even if the ultimate decision would have been the same had constitutional procedures been followed." In *Smith v. University of Wash. Law School*, 2 F. Supp.2d 1324, (W.D. Wash. 1998) Judge Zilly cited the above-quoted passage from *City of Jacksonville* and stated: "Plaintiffs challenging state action on equal protection grounds are not required to demonstrate that they would have received a benefit absent application of a discriminatory policy."

These cases make clear that all members of the class will be entitled to at least nominal damages if the admissions policy is found to be unconstitutional. Even those members who would not have been admitted under a race-neutral policy have a cause of action. Whether particular applicants would or would not have been admitted is, therefore, not relevant to the issue of liability. If the case proceeds to the damage phase, defendants would at that point have the opportunity to show that particular applicants would not have been admitted. Such a showing

would reduce the amount of damages awardable to any such applicants. But in any event, this is an issue which will be relevant at the damages phase of the trial, not at the liability phase.

Conclusion

For the reasons stated above,

IT IS ORDERED that plaintiff's motion for class certification is granted. The class will be certified because the case satisfies all four prerequisites of Rule 23(a) and, in addition, the case is maintainable as a class action under Rule 23(b)(1)(A) and 23(b)(2).

IT IS FURTHER ORDERED that Plaintiff's motion for bifurcation is granted. The liability phase will determine whether the admissions policy is constitutional and, if it is not, whether injunctive and/or declaratory relief should be granted for the class. If the policy is found to be unconstitutional, then the damages phase will determine whether the applicants are entitled to damages and whether any additional injunctive relief should be awarded in individual cases.

/s/ Bernard A. Friedman
BERNARD A. FRIEDMAN
UNITED STATES
DISTRICT JUDGE

Dated: JAN 07 1999
Detroit, Michigan

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER, Plaintiff, v. LEE BOLLINGER, *et al.* Defendants.	) Civil Action No. 97-75928) Hon. Bernard Friedman) Hon. Virginia Morgan

ORDER PROVIDING THAT THE PROPER DEFENDANTS BE NAMED

By agreement of the parties and for good cause shown, it is hereby ORDERED that the defendants herein are: Lee Bollinger, Jeffrey Lehman, Dennis Shields, and the Board of Regents of the University of Michigan. It is FURTHER ORDERED that caption in this matter be amended accordingly, and the amendment and the claims stated in the amended pleading against the Board of Regents shall relate back to the date of the original pursuant to Federal Rule of Civil Procedure 15(c).

So ORDERED, this 1 day of Apr., 1999

/s/ Bernard Friedman
Hon. Bernard Friedman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER, for herself and all others similarly situated, Plaintiff, v. LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, REGENTS OF THE UNIVERSITY OF MICHIGAN, and THE UNIVERSITY OF MICHIGAN LAW SCHOOL, Defendants, and KIMBERLY JAMES, FARAH MONGEAU, JEANETTE HASLETT, RAYMOND MICHAEL WHITLOW, SHABATAYAH ANDRICH, DENA FERNANDEZ, SHALAMAREL KEVIN KILLOUGH, DIEGO BERNAL, JULIE FRY, JESSICA CURTIN, JAMES HUANG, HEATHER BERGMAN, ASHWANA CARLISLE, RONALD CRUZ, NORA CECILIA MELENDEZ, IRAMI OSEI-FRIMPONG, GERALD RAMOS, ARTURO VASQUEZ, EDWARD VASQUEZ, VINCENT KUKUA, HOKU JEFFREY,	Civil Action No. 97-75928 Hon. Bernard Friedman Hon. Virginia Morgan **Intervening Defendants' Answer**

KARLITA STEPHENS, by her Next Friend KARLA STEPHENS-DAWSON, YOLANDA GIBSON, by her Next Friend MARY GIBSON, ERIKA DOWDELL, by her Next Friend HERBERT DOWDELL, JR., AGNES ALEOBUA, by her Next Friend PAUL ALEOBUA, CASSANDRA YOUNG, by her Next Friend YOLANDA J. KING, JAASI MUNANKA, JODI-MARIE MASLEY, SHANNON EWING, JULIE KEROUAC, KEVIN PIMENTEL, BERNARD COOPER, NORBERTO SALINAS, SCOTT ROWEKAMP, RUSS ABRUTYN, JASMINE ABDEL-KHALIK, MEERA DEO, WINIFRED KAO, MELISA RESCH, OSCAR DE LA TORRE, CAROL SCARLETT, UNITED FOR EQUALITY AND AFFIRMATIVE ACTION, THE COALITION TO DEFEND AFFIRMATIVE ACTION BY ANY MEANS NECESSARY, and LAW STUDENTS FOR AFFIRMATIVE ACTION,

Proposed Intervening Defendants

ANSWER OF INTERVENING DEFENDANTS

NOW COME Intervening Defendants, Kimberly James, Farah Mongeau, Jeanette Haslett, Raymond

Michael Whitlow, Shabatayah Andrich, Dena Fernandez, Shalamarel Kevin Killough, Diego Bernal, Julie Fry, Jessica Curtin, James Huang, Heather Bergman, Ashwana Carlisle, Ronald Cruz, Nora Cecilia Melendez, Irami Osei-Frimpong, Gerald Ramos, Arturo Vasquez, Edward Vasquez, Vincent Kukua, Hoku Jeffrey, Karlita Stephens, by her Next Friend Karla Stephens-Dawson, Yolanda Gibson, by her Next Friend Mary Gibson, Erika Dowdell, by her Next Friend Herbert Dowdell, Jr., Agnes Aleobua, by her Next Friend Paul Aleobua, Cassandra Young, by her Next Friend Yolanda J. King, Jaasi Munanka, Jodi-Marie Masley, Shannon Ewing, Julie Kerouac, Kevin Pimentel, Bernard Cooper, Noberto Salinas, Scott Rowekamp, Russ Abrutyn, Jasmine Abdel-Khalik, Meera Deo, Winifred Kao, Melisa Resch, Oscar de la Torre, Carol Scarlett, United for Equality and Affirmative Action, the Coalition to Defend Affirmative Action By Any Means Necessary, and Law Students for Affirmative Action, by and through their attorneys, Scheff & Washington, P.C., and hereby answer the Complaint.

Except as hereafter expressly admitted, qualified, or otherwise admitted, Intervening Defendants specifically deny each and every allegation contained in the Complaint. Intervening Defendants respond to the numbered allegations in the Complaint on personal knowledge or on information and belief as to other matters as follows:

1. No response is required to the allegations in paragraph 1 of the Complaint, which are the plaintiff's characterizations of her claims.

2. Intervening Defendants deny the allegations in paragraph 2 of the Complaint.

3. Intervening Defendants admit that, to the extent the Court has subject-matter jurisdiction, venue is proper in this court. Intervening Defendants deny all of the remaining allegations in paragraph 3 of the Complaint.

4. Intervening Defendants neither admit nor deny the allegations in paragraph 4 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

5. Intervening Defendants admit the allegations in the first sentence of paragraph 5 of the Complaint. Intervening Defendants neither admit nor deny the remaining allegations in paragraph 5 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof, but state that the Law School is a school of the University of Michigan.

6. Intervening Defendants neither admit nor deny the allegations in paragraph 6 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof, except that Intervening Defendants deny the plaintiff was treated unequally.

7. Intervening Defendants neither admit nor deny the allegations in paragraph 7 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof, except that Intervening Defendants deny that plaintiff was treated unequally.

8. Intervening Defendants neither admit nor deny the allegations in paragraph 8 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof, except that Intervening Defendants deny that plaintiff was treated unequally.

9. Intervening Defendants state that the Complaint inaccurately describes the University of Michigan Law School's admission policy, and therefore no response is required. To the extent a response is required, Intervening Defendants neither admit nor deny the allegations in paragraph 9 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

10. Intervening Defendants admit that plaintiff purports to bring this action as a class action. No response is necessary to the plaintiff's characterization of her claims in the remainder of paragraph 10 of the Complaint.

11. Intervening Defendants admit that plaintiff seeks to maintain a class. No response is necessary to the plaintiff's characterization of her claim in the remainder of paragraph 11 of the Complaint.

12. Intervening Defendants neither admit nor deny the allegations in paragraph 12 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

13. Intervening Defendants deny the allegations in paragraph 13 of the Complaint.

14. Intervening Defendants deny the allegations in paragraph 14 of the Complaint, except that Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding the competence and experience of plaintiff's counsel.

15. Intervening Defendants deny the allegations in paragraph 15 of the Complaint.

16. Intervening Defendants state that the University of Michigan is an entity created by the Michigan State Constitution. Intervening Defendants state upon information and belief that the University of Michigan, which includes the University of Michigan Law School, receives federal funds. Intervening Defendants neither admit nor deny the remaining allegations in paragraph 16 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

17. Intervening Defendants admit that the Application to the University of Michigan's J.D. Program permits applicants to indicate their race, and otherwise deny the allegations in paragraph 17 of the Complaint.

18. Intervening Defendants neither admit nor deny the allegations in paragraph 18 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

19. Intervening Defendants state upon information and belief that the University of Michigan Law School uses race as a factor in admissions, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Intervening Defendants deny all of the remaining allegations in paragraph 19 of the Complaint.

20. Intervening Defendants state upon information and belief that the University of Michigan Law School applies rigorous admissions standards to all applicants; and that all admitted students are fully qualified to succeed at the Law School. Intervening Defendants further state upon information and belief that the University of Michigan Law School uses race as a factor in admissions, as part of a broad array of qualifications and

characteristics of which racial or ethnic origin is but a single though important element. Intervening Defendants deny all of the remaining allegations in paragraph 20 of the Complaint.

21. Intervening Defendants deny upon information and belief the allegations in paragraph 21 of the Complaint.

22. Intervening Defendants admit upon information and belief that plaintiff is not a member of an underrepresented minority group and that her race was not a factor that enhanced the University of Michigan Law School's consideration of her application. Intervening Defendants deny all of the remaining allegations in paragraph 22 of the Complaint.

23. Intervening Defendants admit upon information and belief that the University of Michigan Law School uses race as a factor in admission, as part of a broad array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Intervening Defendants deny all of the remaining allegations of paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint states a conclusion of law to which no response is necessary. To the extent that a response is deemed necessary, Intervening Defendants deny the allegations in paragraph 24 of the Complaint.

25. Intervening Defendants deny the allegations in paragraph 25 of the Complaint.

26. Intervening Defendants deny the allegations in the first sentence of paragraph 26 of the Complaint. Intervening Defendants neither admit nor deny the other

allegations in paragraph 26 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

27. Intervening Defendants deny the allegations in the first sentence of paragraph 27 of the Complaint. Intervening Defendants neither admit nor deny the allegations in the remainder of paragraph 27 of the Complaint, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof.

28. Intervening Defendants neither admit nor deny the allegations regarding the Law School's continued use of race as a factor in admissions, lacking knowledge or information sufficient to form a belief as to the truth or falsity thereof. Intervening Defendants deny all of the remaining allegations in paragraph 28 of the Complaint.

RESPONSE TO PLAINTIFF'S FIRST CLAIM

29. Intervening Defendants repeat their responses to the allegations of paragraphs 1-28 of the Complaint as set forth above.

30. Paragraph 30 sets forth a conclusion of law to which no response is required. To the extent a response is required, Intervening Defendants deny the allegations in paragraph 30 of the Complaint.

31. Paragraph 31 sets forth a conclusion of law to which no response is required. To the extent a response is required, Intervening Defendants deny the allegations in paragraph 31 of the Complaint.

RESPONSE TO PLAINTIFF'S SECOND CLAIM

32. Intervening Defendants repeat their responses to the allegations of paragraphs 1-31 of the Complaint as set forth above.

33. Intervening Defendants state that the University of Michigan is an entity created by the Michigan State Constitution. Intervening Defendants admit upon information and belief that the University of Michigan, which includes the Law School, receives federal funds. Intervening Defendants deny the remaining allegations in paragraph 33 of the Complaint.

No response is required to the remainder of the Complaint, which sets forth plaintiff's prayer for relief. To the extent that a response is required, Intervening Defendants deny the remaining allegations in the Complaint.

AFFIRMATIVE DEFENSES

Intervening Defendants assert the following affirmative defenses based on their current knowledge and information.

1. The Complaint fails to state a claim upon which relief may be granted.

2. This Court lacks subject-matter jurisdiction over the Complaint because the plaintiff lacks standing.

3. Plaintiff's claims for injunctive relief are barred by the doctrine of mootness.

4. Plaintiff's claims are barred by the doctrine of laches.

5. The Regents of the University of Michigan are permitted under the First and Fourteenth Amendments to

the United States Constitution to use race, sex and ethnicity as among the factors considered in admissions in order to, among other reasons, remedy the present effects of past and present discrimination, to foster a diverse educational environment, and to ensure some measure of legal and political representation of the interests of black and other minority communities and of all women.

6. Intervening Defendants state that they assert these affirmative defenses based upon information presently available and in order to avoid waiver. Intervening Defendants reserve the right to withdraw any of these affirmative defenses or to assert additional affirmative defenses as further information becomes available.

WHEREFORE, Intervening Defendants pray for a judgment dismissing the Complaint with prejudice and awarding them the costs and disbursements of this action, together with attorneys' fees, and such additional relief as the Court may deem just and proper.

By Intervening Defendants' Attorneys, Scheff & Washington, P.C.

BY: /s/ Miranda K.S. Massie

Miranda K.S. Massie
(P-56564)
One Kennedy Square – Suite 2137
Detroit, Michigan 48226
(313) 963-1921

Dated: February 17, 2000

[Certificate Of Service Omitted In Printing]

The Exhibits on the following pages were entered in the

United States District Court for the
Eastern District of Michigan (Detroit)

[Caption Omitted In Printing]

The J.D. Program: Admissions Requirements and Procedures

Admission to the J.D. Program

Application for admission to the University of Michigan Law School is undeniably a highly competitive process. The School is well aware of the disappointment caused for applicants who are not admitted –often students who might have performed quite ably if there had been room for them in the entering class. Furthermore, in making every reasonable effort to be fair, we also acknowledge the limited accuracy of the judgments which must be exercised in any admissions program. (The criteria on which our judgments are based as they apply to individual applicants are described at some length in the first section of the *Bulletin*.)

Decisions are made by the Admissions Office according to standards established by the faculty and authorized by the Regents of the University, who are publicly elected officials of the State of Michigan. In some cases, the Admissions Office consults with the Faculty Admissions Committee, which consists of faculty members appointed by the Dean.

All applications are read in their entirety, and all of the information elicited by the application is factored into the admission decision. All admissions are made with the goal of forming a class with an exciting and productive mix of students who will enhance the educational experience for each other and for the School. Law School Admission Test (LSAT) scores and undergraduate course work and performance are relied on heavily, as are comparative studies of the past performance of similar students at the Law School. Serious regard is also given to an applicant's

promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic – e.g., an unusual intellectual achievement, employment experience, nonacademic performance, or personal background. The guiding purpose for selection among applicants is to make the School a better and livelier place in which to learn and to improve its service to the profession and the public.

In addition to its own interest in forming a class which is strengthened by the talents and diversity of its members, Michigan recognizes the public interest in increasing the number of lawyers from groups which the faculty identifies as significantly underrepresented in the legal profession. In particular, we strongly encourage prospective students who are African American, Mexican American, Native American, or Puerto Rican and raised on the U.S. mainland to apply. Such applicants are invited to contact the Admissions Office for further information about the School's affirmative efforts to increase enrollment from among these groups. Similarly, the Law School welcomes applications from all persons without regard to their sex, religious affiliation, national origin or ancestry, age, marital status, sexual orientation, or handicap. Every Law School matriculant must be a graduate of an accredited college or university.

Financial aid materials are not included in an applicant's admissions file. Therefore, admissions decisions are not affected or prejudiced by the existence of a financial aid application.

The Idea of Michigan

On Choosing a School

We believe the mature and responsible practice of law requires certain attributes and skills: analytic and intellectual abilities of the highest order (for no way of life is more intellectually demanding than that of the law); the strong moral sense which the lawyer's life of constant ethical challenge and opportunity demands; and the sympathy and imagination which can enable the lawyer to understand the experience of other people, represent that experience in the language of the law, and devise new ways of thinking by which the law can achieve new results.

What kind of education will prepare you for such a profession by the cultivation of such attributes? What school will most nearly offer you this kind of education?

Whatever law school you attend and whatever your prior training has been, you are likely to find the study of law surprisingly difficult. Yet you are also likely to find good and dedicated teachers and library resources adequate to your needs. You will certainly find intellectual and ethical challenges worthy of your attention. Why, then, might it be important to choose a great national law school like Michigan?

Of course, the Michigan degree is of considerable value in landing your first job, and helpful thereafter. Michigan is known around the world as a law school of the first rank, and its graduates work at responsible positions in law firms, public interest and service organizations, government, and private business everywhere. Almost 2,000 employers contact the School each year expressing

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interest in our students, and these represent only a fraction of the possibilities open to our graduates.

But as you examine various law schools, you should reflect upon the fact that once you have your first job – and today most lawyers change jobs at least once – *your success will depend primarily on your own performance*, not upon the prestige of the institution which awarded your degree, and your performance will largely be a function of the kind of education you give yourself in law school. Accordingly, you should ask which law school will best help you equip yourself for the intellectual, ethical, and practical challenges of a life in the law.

In thinking about this, it would be a mistake to suppose that Michigan or any law school will make you an effective practicing lawyer in three years of course work. What you can require, rather, is that your legal education be valuable both in itself and as a preparation for the further experiential education that lies ahead of you. After all, your mind is the instrument by which you will earn your living in the law and achieve whatever else you desire beyond that. You should therefore seek that law school which will offer you the best, and most demanding, training of your mind.

The best basis for choosing a law school, then, is the quality of the educational experience to be obtained there; the range of the school's courses, the distinction of its faculty, the degree of challenge from other students, the diversity of social and geographic backgrounds found among its people. A good education depends on the quality of the other minds the student meets in his or her teachers and in fellow students; on the quality of the student's own engagement, both with other minds and with the material

of the law; on the quality of attention the student receives from his or her teachers; and on the extent to which the atmosphere of the community as a whole fosters learning.

In these respects we think that the University of Michigan Law School excels – indeed, that there are good reasons to choose Michigan over any other school in the country. No faculty is better trained; in no school is the work of legal analysis done better; no school does more to bring the methods and findings of other disciplines to bear on the law; and none has a better combination of intellectual rigor with a friendly and supportive environment. The Michigan faculty is distinguished for its research and writing, but it is also a teaching faculty, proud of its work in the classroom and dedicated to it.

The social context in which learning takes place is an important part of the intellectual character of any school. Perhaps as part of its Midwestern tradition, Michigan is marked by a tone of cheerful friendliness. It is small enough for students to know and be known by name by members of the faculty and the administration. Classroom structure and programs are evaluated and developed with student support in mind. Students like it here. And our students are themselves remarkable, not only for their intelligence, industry, and collegiality, but for the degree to which they individually and collectively look for ways to act responsibly in the world through law.

The University of Michigan

The University of Michigan is one of the great universities of the world, with a long and distinguished past. It was founded in 1817 when the state was still part of the Northwest Territory. In 1787, Congress had provided by its Northwest Territorial Ordinance that public land should be set aside to support institutions of public education, thus establishing a tradition of respect for public service and excellence in higher education. As a state, Michigan provided a home to freed slaves and later led the nation in passing civil rights laws. It was among the first states to institute an Environmental Protection Act. This act, later adopted widely as a model by other states, was the first to extend to private citizens the right to bring suit to stop environmental damage. It should be noted that the act was the work of a member of the University's law faculty.

The University of Michigan was the largest public university in America in the 19th century and by a comfortable margin the most generously supported. It was among the leaders in establishing graduate education along the lines that have now been universally adopted. Until 1931, the Regents, who were and are still publicly elected, had the power to finance the activities of the University through taxation. Since 1931, the University has been supported by legislative appropriations and, increasingly, by generous private donations and tuition. At present, just over one quarter of its annual budget comes from legislative appropriations. It is a public institution, committed to public education and proud of it, but like all great educational institutions of the present day, it must

rely on a combination of state, national, and private resources for its support.

The Law School

The University of Michigan Law School was founded in 1859 and is one of the oldest in the nation. Among its original faculty and for many years its dean was Thomas M. Cooley, one of the great minds of the 19th century, who also served as Chief Justice of the Supreme Court of Michigan and as the first chairman of the Interstate Commerce Commission. Cooley was the author of a definitive treatise on American Constitutional Law, but in the best tradition of mid-19th century America, he was also accomplished as a musician, an inventor, and a social scientist.

* * *

Because of the interdependence of today's social, economic, and governmental systems, it is not possible to segregate purely international law issues from important domestic law issues. This element of legal study is much strengthened in a Milieu where the international perspective is well-established and accessible.

Preparation for Law School

While the Law School does not require any particular course of study or undergraduate major as preparation for the study of law, we do think that it matters what our students have done before they get here. In making admissions decisions, we attempt to assess the quality of an applicant's prior intellectual work.

It is essential that an applicant's general undergraduate program has been challenging and that the student has become intellectually engaged with it. It is desirable that the applicant has studied a range of subjects, including history, mathematics, a natural science, literature, and one of the social sciences, such as economics. It is important that the range of studies has covered certain basic subjects: the essentials of American history, enough mathematics to allow comprehension of statistics, the basic principles of logic and economics, and cultural heritage – the European tradition and preferably that of another culture, as well. In addition, since law is above all an art of language, it is good for the student to have had a great deal of experience with writing and with close, intelligent criticism of this written work. A student whose undergraduate education has not enlarged his or her capacity to read, write, speak, and think and to see the relationships both among ideas and between ideas and

their human contexts is poorly prepared for law school and even less prepared for professional service in the law.

Virtually any major within a strong general program can be the basis for a good undergraduate education if it is taught demandingly and leads to substantive mastery of a discipline. The major need not be related to law, in fact, it is generally considered a waste of time to study law as a preparation for studying law. If we were to sum up our advice in a phrase, it would be: "Study something interesting and hard."

Wise students will regard their undergraduate instruction as the first fully conscious step toward a lifetime of learning. Law school is a second step. Together, the two should complement each other and inspire continued study and reflection, even in the midst of the most vigorous career. The fully developed lawyer knows much more than the law. With these considerations in mind, we look for evidence that the applicant's course of study has been rich and demanding and the he or she has engaged with it in a wholehearted way, developing in the process some personal intellectual interests – and perhaps a distinctive intellectual style.

You may ask how we can test for these qualities in our applicants, and the answer is, of course, that we can do so only imperfectly. Transcripts tell us what courses have been taken, and we have sufficient experience with some undergraduate schools and departments to estimate the rigor and challenge of their programs. In addition, we closely scrutinize the letters of recommendation we receive for each applicant. Finally, we pay careful attention to the form and content of an applicant's required personal statement and any additional statements or essays which

the applicant chooses to submit. All written materials provide some direct evidence of the quality of an applicant's education and mind.

It may be reassuring to hear that the Law School does not expect all students who apply to be fully prepared in the terms we have just outlined. Many of our graduates have begun law study with preparation that was less than ideal. We recognize that some gaps or deficiencies in preparation can be overcome, especially when they are counterbalanced by a good measure of the other qualities and achievements we look for in a candidate. Demonstrated thoughtfulness, orginality of mind, disciplined industriousness, keen curiosity, unusual nonacademic attainments, or relevant work experience are significant qualities and achievements which promise to contribute to the liveliness and overall diversity we expect to find in the class entering Michigan in any given year.

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promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic – e.g., an unusual intellectual achievement, employment experience, nonacademic performance, or personal background. The guiding purpose for selection among applicants is to make the School a better and livelier place in which to learn and to improve its service to the profession and the public.

In addition to its own interest in forming a class which is strengthened by the talents and diversity of its members, Michigan recognizes the public interest in increasing the number of lawyers from groups which the faculty identifies as significantly underrepresented in the legal profession. In particular, we strongly encourage prospective students who are African American, Mexican American, Native American, or Puerto Rican and raised on the U.S. mainland to apply. Such applicants are invited to contact the Admissions Office for further information about the School's affirmative efforts to increase enrollment from among these groups. Similarly, the Law School welcomes applications from all persons without regard to their sex, religious affiliation, national crigin or ancestry, age, marital status, sexual orientation, or handicap. Every Law School matriculant must be a graduate of an accredited college or university.

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The Idea of Michigan

On Choosing a School

We believe the mature and responsible practice of law requires certain attributes and skills: analytic and intellectual abilities of the highest order (for no way of life is more intellectually demanding than that of the law); the strong moral sense which the lawyer's life of constant ethical challenge and opportunity demands; and the sympathy and imagination which can enable the lawyer to understand the experience of other people, represent that experience in the language of the law, and devise new ways of thinking by which the law can achieve new results.

What kind of education will prepare you for such a profession by the cultivation of such attributes? What school will most nearly offer you this kind of education?

Whatever law school you attend and whatever your prior training has been, you are likely to find the study of law surprisingly difficult. Yet you are also likely to find good and dedicated teachers and library resources adequate to your needs. You will certainly find intellectual and ethical challenges worthy of your attention. Why, then, might it be important to choose a great national law school like Michigan?

Of course, the Michigan degree is of considerable value in landing your first job, and helpful thereafter. Michigan is known around the world as a law school of the first rank, and its graduates work at responsible positions in law firms, public interest and service organizations, government, and private business everywhere. Almost 2,000 employers contact the School each year expressing

interest in our students, and these represent only a fraction of the possibilities open to our graduates.

But as you examine various law schools, you should reflect upon the fact that once you have your first job – and today most lawyers change jobs at least once – your success will depend primarily on your own performance, not upon the prestige of the institution which awarded your degree, and your performance will largely be a function of the kind of education you give yourself in law school. Accordingly, you should ask which law school will best help you equip yourself for the intellectual, ethical, and practical challenges of a life in the law.

In thinking about this, it would be a mistake to suppose that Michigan or any law school will make you an effective practicing lawyer in three years of course work. What you can require, rather, is that your legal education be valuable both in itself and as a preparation for the further experiential education that lies ahead of you. After all, your mind is the instrument by which you will earn your living in the law and achieve whatever else you desire beyond that. You should therefore seek that law school which will offer you the best, and most demanding, training of your mind.

The best basis for choosing a law school, then, is the quality of the educational experience to be obtained there: the range of the school's courses, the distinction of its faculty, the degree of challenge from other students, the diversity of social and geographic backgrounds found among its people. A good education depends on the quality of the other minds the student meets in his or her teachers and in fellow students; on the quality of the student's own engagement, both with other minds and with the material

of the law; on the quality of attention the student receives from his or her teachers; and on the extent to which the atmosphere of the community as a whole fosters learning.

In these respects we think that the University of Michigan Law School excels – indeed, that there are good reasons to choose Michigan over any other school in the country. No faculty is better trained; in no school is the work of legal analysis done better; no school does more to bring the methods and findings of other disciplines to bear on the law; and none has a better combination of intellectual rigor with a friendly and supportive environment. The Michigan faculty is distinguished for its research and writing, but it is also a teaching faculty, proud of its work in the classroom and dedicated to it.

The social context in which learning takes place is an important part of the intellectual character of any school. Perhaps as part of its Midwestern tradition, Michigan is marked by a tone of cheerful friendliness. It is small enough for students to know and be known by name by members of the faculty and the administration. Classroom structure and programs are evaluated and developed with student support in mind. Students like it here. And our students are themselves remarkable, not only for their intelligence, industry, and collegiality, but for the degree to which they individually and collectively look for ways to act responsibly in the world through law.

Michigan's History

The University of Michigan

The University of Michigan is one of the great universities of the world, with a long and distinguished past. It was founded in 1817 when the state was still part of the

Northwest Territory. In 1787, Congress had provided by its Northwest Territorial Ordinance that public land should be set aside to support institutions of public education, thus establishing a tradition of respect for public service and excellence in higher education. As a state, Michigan provided a home to freed slaves and later led the nation in passing civil rights laws. It was among the first states to institute an Environmental Protection Act. This act, later adopted widely as a model by other states, was the first to extend to private citizens the right to bring suit to stop environmental damage. It should be noted that the act was the work of a member of the University's law faculty.

The University of Michigan was the largest public university in America in the 19th century and by a comfortable margin the most generously supported. It was among the leaders in establishing graduate education along the lines that have now been universally adopted. Until 1931, the Regents, who were and are still publicly elected, had the power to finance the activities of the University through taxation. Since 1931, the University has been supported by legislative appropriations and, increasingly, by generous private donations and tuition. At present, just over one quarter of its annual budget comes from legislative appropriations. It is a public institution, committed to public education and proud of it, but like all great educational institutions of the present day, it must rely on a combination of state, national, and private resources for its support.

The Law School

The University of Michigan Law School was founded in 1859 and is one of the oldest in the nation. Among its original faculty and for many years its dean was Thomas M. Cooley, one of the great minds of the 19th century, who also served as Chief Justice of the Supreme Court of Michigan and as the first chairman of the Interstate Commerce Commission. Cooley was the author of a definitive treatise on American Constitutional Law, but in the best tradition of mid-19th century America, he was also accomplished as a musician, an inventor, and a social scientist.

From its inception, Michigan, unlike other distinguished law schools of the time, was not restricted to the wealthy. Nor was it a local institution. It drew students from many parts of the East, from all over the Middle West, and from states of the Great Plains. The School, which had never excluded students on the grounds of race, admitted its first African American student, Gabriel Franklin Hargo of Adrian, Michigan, in 1868 and with his graduation in 1870 became the second American university to confer a law degree on an African American. By 1870, the admission of women was accomplished, and in 1871 Sarah Killgore of Crawfordsville, Indiana, graduated from the School, the first woman in the English-speaking world to receive a university law degree. By 1894, the Law School had enrolled its first Mexican American students. An early member of this group, J. T. Canales, achieved prominence in the Texas state government.

Like other law schools of the 1870s, Michigan at first offered a two-year program of lectures, open to all students with high school diplomas. However, in keeping with the

University's leadership in graduate education generally, Michigan became one of the first law schools to extend its program to three years, to adopt the "case method," and to require previous undergraduate training. It was also among the first to offer post-graduate instruction in law, to create joint degree programs, and to establish offerings in clinical law.

General Curriculum and Methods of Instruction

Today, Michigan offers a curriculum that prepares its students for legal practice anywhere in the United States and throughout much of the world. It firmly links professional training to the opportunity for reflection about many of our most fundamental public questions, such as the nature of law itself and the character of constitutional democracy, as well as to an examination of how the law can address issues of real social urgency – from crime and the environment to child abuse and the effects of religious, racial and gender intolerance in our culture. It is the School's philosophy that the proper education for a lawyer requires more than the acquisition of a set of professional techniques; it should also help the student make the most of his or her capacity for a full life in the law. Indeed, what we hope for our students is not that they will become rich or powerful or famous, though many will, but that they come to find a profound sense of worth in their work, rooted ultimately in their experience at this law school.

The curriculum at Michigan today reflects the view that a life in the law calls for knowledge and capacities which cannot be reduced to a single set. People make

professional lives of very different kinds with very different skills and aptitudes and with different emphases in their training. Accordingly, the School encourages independence and diversity of thought, which together provide the most solid intellectual and ethical basis for any professional career. Instead of a single model of training, then, Michigan offers a variety of opportunities for education and expects its students to take advantage of the curriculum in different ways.

Law and Other Disciplines

There are certain strengths and emphases in the curriculum here which are widely recognized as characteristic of the study of law at Michigan. The School is a national leader in the movement which relates the insights and methods of other disciplines to law. The assumption underlying this current in legal studies is that the capacity to function in more than one intellectual field and to connect the work of one field to another has, in addition to its intrinsic merit, a pragmatic usefulness which the practicing lawyer may call on frequently. Not only must a lawyer be able to understand what the economist or historian says and translate it into the language of the law, often he or she must be able to translate it correctly into the ordinary language spoken by the jury or the public. It is not just the substantive information of other fields which is important, but also skill in translating from one field to another.

Michigan's strength in interdisciplinary legal studies is apparent both in the way traditional courses are taught and in the wide array of specialized courses taught by faculty who are lawyers with advanced degrees in other

disciplines. The clinical law offerings at Michigan also reflect the School's interest in interdisciplinary work and demonstrate the importance of familiarizing lawyers with other fields of study which can bear on legal issues. The Child Advocacy Clinic, for example, integrates the work of medial specialists and others with that of the lawyer; the Environmental Law Clinic coordinates its classes with those of the School for Natural Resources; and the program in Legal Assistance for Urban Communities puts theories of business and organizational development into action.

Strength in the interdisciplinary approach to legal study at Michigan harmonizes with traditional legal study and research. Several of the nation's leading treatises, including those in federal jurisdiction, evidence, and criminal procedure, are the work of Michigan faculty. Indeed, with regard to both traditional and interdisciplinary legal writing, to study at Michigan is in many instances to study with the scholar who "wrote the book" – a casebook or text in use in law schools nationwide or a study of widely recognized influence on legal education and thought. Included below is a partial list of works by Michigan faculty.

* * *

Preparation for Law School

While the Law School does not require any particular course of study or undergraduate major as preparation for the study of law, we do think that it matters what our students have done before they get here. In making admissions decisions, we attempt to assess the quality of an applicant's prior intellectual work.

It is essential that an applicant's general undergraduate program has been challenging and that the student has become intellectually engaged with it. It is desirable that the applicant has studied a range of subjects, including history, mathematics, a natural science, literature, and one of the social sciences, such as economics. It is important that the range of studies has covered certain basic subjects: the essentials of American history, enough mathematics to allow comprehension of statistics, the basic principles of logic and economics, and cultural heritage – the European tradition and preferably that of another culture, as well. In addition, since law is above all an art of language, it is good for the student to have had a great deal of experience with writing and with close, intelligent criticism of this written work. A student whose undergraduate education has not enlarged his or her capacity to read, write, speak, and think and to see the relationships both among ideas and between ideas and their human contexts is poorly prepared for law school and even less prepared for professional service in the law.

Virtually any major within a strong general program can be the basis for a good undergraduate education if it is taught demandingly and leads to substantive mastery of a discipline. The major need not be related to law; in fact, it is generally considered a waste of time to study law as a

preparation for studying law. If we were to sum up our advice in a phrase, it would be: "Study something interesting and hard."

Wise students will regard their undergraduate instruction as the first fully conscious step toward a lifetime of learning. Law school is a second step. Together, the two should complement each other and inspire continued study and reflection, even in the midst of the most vigorous career. The fully developed lawyer knows much more than the law. With these considerations in mind, we look for evidence that the applicant's course of study has been rich and demanding and that he or she has engaged with it in a wholehearted way, developing in the process some personal intellectual interests – and perhaps a distinctive intellectual style.

You may ask how we can test for these qualities in our applicants, and the answer is, of course, that we can do so only imperfectly. Transcripts tell us what courses have been taken, and we have sufficient experience with some undergraduate schools and departments to estimate the rigor and challenge of their programs. In addition, we closely scrutinize the letters of recommendation we receive for each applicant. Finally, we pay careful attention to the form and content of an applicant's required personal statement and any additional statements or essays which the applicant chooses to submit. All written materials provide some direct evidence of the quality of an applicant's education and mind.

It may be reassuring to hear that the Law School does not expect all students who apply to be fully prepared in the terms we have just outlined. Many of our graduates have begun law study with preparation that was less than

ideal. We recognize that some gaps or deficiencies in preparation can be overcome, especially when they are counterbalanced by a good measure of the other qualities and achievements we look for in a candidate. Demonstrated thoughtfulness, orginality of mind, disciplined industriousness, keen curiosity, unusual nonacademic attainments, or relevant work experience are significant qualities and achievements which promise to contribute to the liveliness and overall diversity we expect to find in the class entering Michigan in any given year.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER,

Plaintiff,

v.

LEE BOLLINGER, *et al.*

Defendants. /

Case No. 97-75928

HON. BERNARD A. FRIEDMAN

ORDER

On December 22, 2002, the parties' cross-motions for summary judgment came before the court. A hearing was held and oral argument heard. For the reasons stated on the record,

IT IS ORDERED that the court will take the parties' cross-motions for summary judgment under advisement to the extent that they involve the legal determination of whether the attainment of a racially diverse student body is a compelling state interest.

IT IS FURTHER ORDERED that the court will hold a bench trial[1] to hear testimony on the following:

(1) The extent to which race is a factor in the Law School's admissions decisions,

(2) Whether the Law School's consideration of race in making admissions decisions

[1] The parties have stipulated that the Law School uses race as a factor in making admissions decisions. Therefore, this issue need not be tried.

constitutes a double standard in which minority and non-minority students are treated differently, and

(3) The issues argued at the hearing in relation to the LSAT scores and grade point averages as they relate to the intervenors' contention that the Law School may take race into account to "level the playing field."

IT IS FURTHER ORDERED that the trial shall commence on January 16, 2001, at 9:00 a.m., and will continue as per the schedule stated on the record.

IT IS FURTHER ORDERED that each party shall have thirty hours to present its case, consistent with the memorandum that the court will forward to all parties concerning the manner in which the thirty hours will be calculated.

BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Dated: 12/22/00

Copy Mailed This Date To: David F. Herr, Esq.; Kirk Kolbo, Esq.; R. Lawrence Purdy, Esq. John Payton, Esq.; Jane Sherburne, Esq. John H. Pickering, Esq.; Craig Goldblatt, Esq. Kierry L. Morgan, Esq. Leonard M. Niehoff, Esq. Richard A. Wilhelm, Esq.

Patrick J. Wright, Assistant
Attorney General
Martin Michaelson, Esq.;
Steven J. Routh, Esq.;
Alexander E. Dreier, Esq.
Jeremiah Glassman, Esq.;
Kathryn M. Woodruff, Esq.;
Kenneth D. Johnson, Esq.
Edward B. Foley, Assistant
Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER,
for herself and all others
similarly situated,

Plaintiff,

v.

LEE BOLLINGER,
JEFFREY LEHMAN,
DENNIS SHIELDS, and
THE BOARD OF
REGENTS OF THE
UNIVERSITY OF
MICHIGAN

Defendants,

and

KIMBERLY JAMES,
FARAH MONGEAU,
JEANETTE HASLETT,
RAYMOND MICHAEL
WHITLOW, SHABATAYAH
ANDRICH, DENA
FERNANDEZ, SHALAMA-
REL KEVIN KILLOUGH,
DIEGO BERNAL, JULIE
FRY, JESSICA CURTIN,
JAMES HUANG,
HEATHER BERGMAN,
ASHWANA CARLISLE,
RONALD CRUZ, NORA
CECILIA MELENDEZ,
IRAMI OSEI-FRIMPONG,
GERALD RAMOS,
ARTURO VASQUEZ,

Civil Action No. 97-75928
Hon. Bernard A. Friedman
Hon. Virginia Morgan

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed Mar. 30, 2001)

EDWARD VASQUEZ, VINCENT KUKUA, HOKU JEFFREY, KARLITA STEPHENS, by her Next Friend KARLA STEPHENS-DAWSON, YOLANDA GIBSON, by her Next Friend MARY GIBSON, ERIKA DOWDELL, by her Next Friend HERBERT DOWDELL, JR., AGNES ALEOBUA, by her Next Friend PAUL ALEOBUA, CASSANDRA YOUNG, by her Next Friend YOLANDA J. KING, JAASI MUNANKA, JODI-MARIE MASLEY, SHANNON EWING, JULIE KEROUAC, KEVIN PIMENTEL, BERNARD COOPER, NORBERTO SALINAS, SCOTT ROWEKAMP, RUSS ABRUTYN, JASMINE ABDEL-KHALIK, MEERA DEO, WINIFRED KAO, MELISA RESCH, OSCAR DE LA TORRE, CAROL SCARLETT, UNITED FOR EQUALITY AND AFFIRMATIVE ACTION, THE COALTION TO DEFEND AFFIRMATIVE ACTION BY ANY MEANS NECESSARY, and LAW STUDENTS

FOR AFFIRMATIVE ACTION,

Intervening Defendants.

Notice is hereby given that Defendants, Lee Bollinger, Jeffrey Lehman, Dennis Shields, and the Board of Regents of the University of Michigan, hereby appeal to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1292(a), from the Order of the District Court, dated March 27, 2001, which granted Plaintiff's request for injunctive relief and enjoined Defendants "from using applicants' race as a factor in its admissions decisions."

Dated: March 30, 2001

By /s/ Philip J. Kessler
Philip J. Kesler, P15921
Leonard M. Niehoff, P36695
BUTZEL LONG
350 South Main Street,
Suite 300
Ann Arbor, MI 48104
(734) 213-3625

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2445 M Street, N.W.
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ATTORNEYS FOR DEFENDANTS

[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BARBARA GRUTTER,
for herself and all others
similarly situated,

Plaintiff,

-vs-

LEE BOLLINGER,
JEFFREY LEHMAN,
DENNIS SHIELDS, and
THE BOARD OF
REGENTS OF THE
UNIVERSITY OF
MICHIGAN,

Defendants,

and

KIMBERLY JAMES,
FARAH MONGEAU,
JEANETTE HASLETT,
RAYMOND MICHAEL
WHITLOW, SHABATAYAH
ANDRICH, DENA
FERNANDEZ, SHALAMA-
REL KEVIN KILLOUGH,
DIEGO BERNAL, JULIE
FRY, JESSICA CURTIN,
JAMES HUANG,
HEATHER BERGMAN,
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RONALD CRUZ, NORA
CECILIA MELENDEZ,
IRAMI OSEI-FRIMPONG,
GERALD RAMOS,
ARTURO VASQUEZ,

Civil Action No. 97-75928
Hon. Bernard Friedman
Hon. Virginia Morgan

NOTICE OF APPEAL

EDWARD VASQUEZ,
VINCENT KUKUA, HOKU
JEFFREY, KARLITA
STEPHENS, by her Next
Friend KARLA
STEPHENS-DAWSON,
YOLANDA GIBSON, by
her Next Friend MARY
GIBSON, ERIKA
DOWDELL, by her Next
Friend HERBERT
DOWDELL, JR., AGNES
ALEOBUA, by her Next
Friend PAUL ALEOBUA,
CASSANDRA YOUNG,
by her Next Friend
YOLANDA J. KING,
JAASI MUNANKA,
JODI-MARIE MASLEY,
SHANNON EWING,
JULIE KEROUAC, KEVIN
PIMENTEL, BERNARD
COOPER, NORBERTO
SALINAS, SCOTT
ROWEKAMP, RUSS
ABRUTYN, JASMINE
ABDEL-KHALIK, MEERA
DEO, WINIFRED KAO,
MELISA RESCH, OSCAR
DE LA TORRE, CAROL
SCARLETT, UNITED FOR
EQUALITY AND
AFFIRMATIVE ACTION,
THE COALITION TO
DEFEND AFFIRMATIVE
ACTION BY ANY MEANS
NECESSARY, and
LAW STUDENTS

FOR AFFIRMATIVE
ACTION,

Intervening Defendants

NOTICE OF APPEAL

The Intervening Defendants hereby appeal to the United States Court of Appeals for the Sixth Circuit from the District Court's March 27, 2001 Order enjoining Defendants from using race as a factor in admissions. The appeal is taken pursuant to 28 USC § 1292(a).

By Intervening Defendants' Attorneys,
Scheff & Washington, P.C.

BY: /s/ Miranda K.S. Massie
Miranda K.S. Massie (P-56564)
One Kennedy Square – Suite 2137
Detroit, Michigan 48226
(313) 963-1921

Dated: April 11, 2001

[Certificate Of Service Omitted In Printing]

EXHIBIT NO. 2

April 18, 1997

Barbara Jean Grutter
48563 Meadow Court
Plymouth, MI 48170

Dear Ms. Grutter:

I am writing to inform you of the status of your application to the University of Michigan Law School. At this time, we have reviewed all of the applications we have received and have extended as many offers of admission as we can. You are, however, a strong applicant and your file is among those we have placed on a waiting list for further consideration should space become available.

I realize that placement on a waiting list is at best a mixed blessing. To dispel some of the uncertainty you may feel, I would like to explain to you how our selection process will work during the next few months. This information should help you decide whether to continue your application to Michigan and for how long. Please complete the enclosed Waiting List Response Form and return it within two weeks of the date of this letter. If we do not hear from you within that time, we will assume you have decided to pursue other opportunities.

In fairness to those on our waiting list, we have asked all admitted applicants to notify us if they intend to accept or decline a place in our first-year class. Throughout the spring and summer months we will monitor our class size and composition, and we will extend offers to waitlisted applicants as space permits.

Filling the Summer Section is our first priority, and we will pay special attention to those on the waiting list who have expressed an interest in a summer start. You should know that a willingness to start in the summer may slightly improve your chances of admission. Please be aware, however, that summer applicants may be admitted on very short notice, possibly within two weeks or less of the start of classes. If you are free to accept a last-minute summer offer, I encourage you to check the corresponding box on the Waiting List Response Form. If we are unable to offer you summer placement, your application will be considered automatically for the fall term.

Once the Summer Section is filled, we will begin to consider waitlisted applicants for the fall. We may make some fall offers in late May or early June. However, most offers will be made after the middle of June when we have a better idea of the size of the fall class. In the meantime, all waitlisted applicants are invited to update their applications. Please feel free to notify us by mail of new honors or awards received. If you have completed additional academic work, please send us an updated transcript. We also welcome additional letters of recommendation.

Finally, all waitlisted applicants should complete their applications for financial aid from both the University of Michigan Law School (if applicable) and from federal and private loan programs. A completed financial aid application will enable the Office of Financial Aid to make you a timely offer of financial aid if you are admitted.

I would like to make it clear that we offer places on our waiting list to a substantial number of applicants. However, no applicant is waitlisted unless we are confident that he or she will be a fine addition to our class

should space become available. As a result, we do not rank our waiting list numerically and cannot predict your chances of being admitted. However, we understand that you need a final decision from us as soon as possible. To that end, we will pare the waiting list periodically throughout the summer, probably in late May, late June, and late July. If you application is among those we can no longer consider, we will inform you immediately.

Because of the fluid nature of our admissions process, we are unable to provide you, either in writing or over the telephone, with specific information about your chances of admission. Thank you for your patience as we begin this necessary but sometimes frustrating stage of the admissions season. We appreciate your interest in the University of Michigan Law School and look forward to receiving your Waiting List Response Form.

Sincerely,

/s/ Dennis J. Shields
Dennis J. Shields
Assistant Dean and
Director of Admissions

DJS:sll

June 25, 1997

Barbara Jean Grutter
48563 Meadow Court
Plymouth, MI 48170

Dear Ms. Grutter:

It is now clear that we will be unable to offer you a place in our 1997 first-year class. Michigan's waiting list included dozens of well-qualified applicants; unfortunately, the size of our class prevented acceptance of many who we would have been delighted to have as students and proud to count among our alumni. Such decisions are difficult, but we have reviewed each application with a great deal of care and have endeavored to be fair to all.

I hope that you will be attending another law school in September. However, if you decide to postpone enrollment until another year, we would be pleased to receive another application from you during a new admissions season.

I wish you much success with your alternative plans. Thank you for your interest in Michigan.

Sincerely,

/s/ Dennis J. Shields
Dennis J. Shields
Assistant Dean and
Director of Admissions

DJS:fvb

EXHIBIT NO. 4

THE UNIVERSITY OF MICHIGAN

LAW SCHOOL

HUTCHINS HALL

ANN ARBOR, MICHIGAN 48109-1215

FACULTY MEETING

Date:

April 24, 1992

Present:

Seligman, Herzog, Feldman, Fox, Friedman, Van Putten, Leary, Whitman, Duquette, Syverud, Regan, Shaw, White, J.B., Shields, Cooper, Gross, Aleinikoff, Sandalow, Green, Kramer, Reingold, Krier, Kamisar, Chambers, Whtie, J.J., Kahn, Allen, Waggoner, Vining, White, J.B., Lempert, Simpson, Lehman, Katz, A., Cunningham

The Academic Standards Committee proposal dated March 25, 1992 about retake exams was rejected by the faculty.

The faculty approved the April 2, 1992 Wolfson Trust budget for 1992-93.

The Cook budget was presented by the Research Committee for discussion.

The report and recommendations of the Admissions Committee dated April 22, 1992 was adopted by the faculty.

Respectfully submitted,

/s/ Virginia B. Gordan
Virginia B. Gordan
Assistant Dean

REPORT AND RECOMMENDATIONS OF
THE ADMISSIONS COMMITTEE

The attached statement of admission policy is presented to the faculty for its adoption.

4/22/92

Admissions Policies

Our goal is to admit a group of students who individually and collectively are among the most capable students applying to American law schools in a given year. As individuals we expect our admittees not only to have substantial promise for success in law school but also to have a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others. Michigan has many alumni who are esteemed legal practitioners, leaders of the American bar, significant contributors to legal scholarship and/or selfless contributors to the public interest. Those we admit should have the potential to follow in these traditions.

Collectively, we seek a mix of students with varying backgrounds and experiences who will respect and learn from each other. We hope our students will find in their

peers both rich resources for learning and the kind of sustaining friendships that help in getting over hard times and make the good times yet more pleasant. We hope professors will see in their students one of the rewards of teaching at this school. In the classroom setting the educational experience depends in large measure on the quality of student performance. Many law school classes depend on prepared and articulate students to advance the discussion, and in all classes perceptive, original observations can teach both faculty and students alike. We also recognize that much that is educationally valuable occurs not in the classroom but in informal conversations and in the more formal activities of numerous student organizations such as Michigan's many law journals, various ethnic-, religious- and gender-focused groups, numerous practice-oriented and law specialty societies and diverse political groups of the left, right and in between. As a group our students have the responsibility for maintaining and changing this vibrant extra-curricular life in ways that respond to their own needs and concerns. At the admissions stage we value people who have shown the capacity to be self-educating and to contribute to the learning of those around them.

The question we confront then is how to achieve these goals. A minimal criterion is easy to state as is one important constraint that we confront. The minimal criterion is that no applicant should be admitted unless we expect that applicant to do well enough to graduate with no serious academic problems. The constraint is that we are part of a publicly funded university. As such we feel that a reasonable proportion of our places should go to Michigan residents, even if some have qualifications lower than those of some applicants from outside Michigan. The

challenge is to meet our goals while ensuring that all who enter can succeed here and honoring the special claims of Michigan residents to a Michigan Law School education.

We begin with the individual and the goal of maximizing competence. Our most general measure, and for some students our only good measure, of the likelihood of a distinguished legal career is success in law school as operationalized by graded law school performance. Our most general measure predicting graded law school performance is a composite of an applicant's LSAT score and undergraduate gradepoint average (UGPA) (which we shall call the "index"). However, each of these measures is far from perfect. The asserted connection between graded law school performance and the likelihood of success in practice is based more on faith and anecdote than it is on rigorous research findings. Such research as exists on this topic is inconclusive, for reasons that do not disconfirm our assumption of the relevance of law school success, but that make it difficult to confirm it. The connection between the index and graded law school performance can be statistically shown. At Michigan the index for three of the four most recently admitted classes explained on average 27% of the variance in first-year graded performance.[1]

In short the index does not do all the predictive work that an admissions committee might wish. Yet it should not be ignored. In particular, as the size of the differences

[1] 1st semester grade point averages were used for the class beginning in 1991. We did not calculate the correlation between index scores and 1st year performance for the class beginning in 1989. We have no reason to believe that this correlation would differ substantially from the correlations we calculated.

in applicant index scores increases, the value of the index as a predictor of graded law school performance increases as well. Thus, while there may be little reason to expect that an applicant with an index score of "N" will have a higher law school grade point average (hereafter "LGPA") than an applicant with an index score of ".98 N", there may be considerable reason to believe that she will have a higher LGPA than an applicant with a score of ".80 N". Moreover, while there may be only a moderate connection between the index and LGPA within the range where most of our admissions are made, there is good reason to believe that attention to the index will increase the validity of LGPA predictions based on such intuitively appealing information as the level of praise in letters of recommendation, the kind of college an applicant has attended, or the quality of an applicant's essay.

The Committee draws the following conclusions from these facts. Bluntly, the higher one's index score, the greater should be one's chances of being admitted. The lower the score, the greater the risk the candidate poses. And when scores are extremely low, it is extremely difficult for us reliably to pick out those who would be successful at Michigan and in the practice of law. So we expect the vast majority of those students we admit to have high index scores.

Still, even the highest possible score ought not guarantee admission: imagine an applicant whose undergraduate course selection seems relentlessly dull, whose personal statements and LSAT essay are thin or incoherent, and whose letter of recommendation damn with faint praise. And even a quite low score ought not automatically deny a candidate admission: for again one can imagine dramatically offsetting considerations.

When the differences in index scores are small, we believe it is important to weigh as best we can not just the index but also such file characteristics as the enthusiasm of recommenders, the quality of the undergraduate institution, the quality of the applicant's essay, and the areas and difficulty of undergraduate course selection. These "soft" variables not only bear on the applicant's likely graded performance but also have the additional benefit that they may tell us something about the applicant's likely contributions to the intellectual and social life of the institution. Thus an applicant who has performed well in advanced courses in a demanding subject may have more to offer both faculty and students than an applicant with a similarly high average achieved without ever pursuing in depth any area of learning. Other information in an applicant's file may add nothing about the applicant's likely LGPA beyond what may be discerned from the index, but it may suggest that that applicant has a perspective or experiences that will contribute to the diverse student body that we hope to assemble. The applicant may for example be a member of a minority group whose experiences are likely to be different from those of most students, may be likely to make a unique contribution to the bar, or may have had a successful career as a concert pianist or may speak five languages.

The preceding paragraph corresponds to the way admissions decisions seem to have been made for some time, although it does not precisely square with the details of the "pool system" as that system has been described in past faculty documents. (In fact, it would be impossible fully to implement the pool system as described, if for no other reasons than that in the admissions process both the receipt and the completion of files, and the offering and

acceptance of places, occurs over a span of many months.) The result of the actual decision making has been that the pattern of our admissions decisions may be nicely visualized in terms of a grid with LSAT score along one axis and UGPA along the other. (See Figure One, p.15) Most of our admitted students have had LSAT scores and UGPAs that placed them in the upper right hand portion of the grid. Applicants located at the extreme upper right hand corner of the grid where the highest LSAT scores overlap with the highest UGPAs are very likely to be admitted, although not all are offered admission. The further applicants are from the upper right corner the less likely they are to be offered admission. Thus we may think of the upper right portion of the grid as indicating the combinations of LSAT and UGPA that characterize the overwhelming bulk of students admitted.[2]

At the same time, as Figure One makes clear, considerable discretion is exercised in the admissions process. Even controlling for residency status, people in inferior grid positions are accepted while those who seem to have more attractive credentials are denied admission. As we explained above, this pattern of decision making is sensible, for many qualities not captured in grades and test scores figure in the evaluation of an application. This discretion should continue. The issue that confronts us is how shall that discretion be exercised and by whom.

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[2] The location of out-of-state admittees as a group would, if plotted separately, be higher and closer to the upper right corner than the location of all admittees since the group of non-resident admittees is on the whole somewhat stronger on the plotted dimensions than the group of resident admittees.

In the recent past, up until about two years ago, this discretion was exercised almost entirely by the Dean of Admissions and his staff with little formal input from the faculty. This sometimes led to faculty complaints about admissions decision making and led our previous Dean of Admissions to complain that he often felt that he did not know exactly what kinds of applicants the faculty wanted to attract. During the last two years, the Dean of Admissions has consulted with the faculty on a portion of the admissions decisions. This has allowed the faculty as represented by its admissions committee to tell its Dean of Admissions how a mix of faculty evaluate the different kinds of strengths and weaknesses that are found in applicant files. The Dean of Admissions can in turn keep these considerations in mind in dealing with files that only he and his staff read. We believe that this kind of continuing faculty input is quite valuable and propose that the admissions committee continue to read files and advise the Dean of Admissions. In particular, we recommend that the members of the Admissions Committee read approximately 50 applications a year from the applicants whose position on the grid is within the range from which most of our admissions come. Some may be chosen randomly and others with regard to the particular matters they illustrate or the issues they pose. The faculty views on these files should be discussed with the Dean of Admissions and with such other members of the admissions staff as the Assistant Dean and the committee chair agree should be included.

As we have noted, some students will qualify for admission despite index scores that place them relatively far from the upper right corner of the grid. There are two principal types of reason for such admissions. First, there

are students for whom we have good reason to be skeptical of an index score based prediction. The usual candidate who fits this description will be a student like "X" whom the Committee voted to admit to next year's class.

> X, a Michigan resident, had a 3.57 UGPA at Brown University, with a dual major in history and German. His transcript revealed that he had taken many challenging courses, and his recommenders spoke of his intelligence and praised his intellectual ability. However, X's application was weakened substantially by an LSAT score at the 68th percentile and a resulting low index. The LSAT was not fatal to the application in this instance because the admissions committee noted that as a college applicant X had had an SAT score that placed him in the bottom decile of all Brown admittees. Concluding that X's performance on standardized tests was likely to be a poor predictor of his later academic success, the Committee voted to admit X on the basis of his strong undergraduate record and with the expectation that this record would be a better predictor of X's performance at Michigan than his LSAT score.

We believe that we should continue to be receptive to students of this sort, but that faculty input into the discretion exercised in such cases is important. Thus we recommend that the Dean of Admissions seek the advice of the Admissions Committee on a representative sample of cases which involve students who are expected to perform substantially better than their index would suggest. We also recommend that all such students admitted be flagged and their law school grades reported each year to the admissions committee so that we can learn whether the predictions made about their performance were correct.

The second sort of justification for admitting students with indices relatively far from the upper right corner is that this may help achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts. In particular we seek to admit students with distinctive perspectives and experiences as well as students who are particularly likely to assume the kinds of leadership roles in the bar and make the kinds of contributions to society discussed in the introduction to this report. (We reiterate, however, that *no* student should be admitted unless his or her file as a whole leads us to expect him or her to do well enough to graduate without serious academic problems.)

There are many possible bases for diversity admissions. During the past year for example the Admission Committee, influenced by diversity considerations, has recommended the admission of students like the following:

> *X* is a 27-year old applicant who came to the United States for his college education after working on literacy and world hunger projects during grade school and high school in his native Bangladesh. He completed his undergraduate work at Harvard in 1991, where his gradepoint average was 2.67 (8th percentile of those applying for law school). He scored only a 31 (46th percentile) and 152 (56th percentile) on two administrations of the LSAT. But the candidate amassed outstanding references from Ken Prewitt at the SSRC, from Derek Bok and from other professors at Harvard and people within the international community. All refer to his truly exceptional record of extracurricular activity and subsequent employment in international development issues, to the quality of his mind and to his capacity for contribution to the school

> and the profession. He presently is working for UNICEF in Zimbabwe.
>
> Y came to the United States from Argentina in 1982 at the age of 21, single and six months pregnant. Within a few years she went from an administrative secretary for NCR to director of sales for a major Cincinnati hotel, winning four promotions in as many years. She returned to school full time at the University of Cincinnati in an honors Political Science curriculum in January 1988, receiving nothing less than "A" grades, and amassing glowing references about the quality of her intellect. She will graduate summa cum laude and Phi Beta Kappa. Her LSAT, however, was only 151 (52nd percentile). Both her personal statement and essay were well written and insightful. She is fluent in four languages and has been active in numerous student groups. All of her accomplishments have been gained while raising her child (now eight) alone.
>
> Z had a 3.99 GPA from the University of Florida and a 41 (90th percentile) LSAT. She has majored in Political Science, with three minors: Classics, Economics, and Latin American Studies. The daughter of two Greek immigrants, she has been immersed in a significantly ethnic home life. She has travelled to Greece during the summers, but also has studied in Spain and the Netherlands. She is fluent in English, Greek and Spanish. Her personal statement and essay are both well written and provocative, and her faculty references extremely strong. This candidate's credentials bring her within the range of applicants from which we make a reasonable number of offers. Her file illustrates how diversity considerations may considerably strengthen good but not exceptional numerical credentials.

Other bases for such admissions decision will also come readily to mind, although different faculty members will, no doubt, think of different achievements or characteristics they would value. One might, for example, give substantial weight to an Olympic gold medal, a Ph.D. in physics, the attainment of age 50 in a class that otherwise lacked anyone over 30, or the experience of having been a Vietnamese boat person. Precisely which characteristics should be valued is a matter left to the Dean of Admissions and the Admissions Committee as specified below. No doubt the kinds of conditions that make for valued diversity will change to some degree each year as the composition of the admissions committee changes. The varied perspectives from which different committees will interpret the concept "diversity" should further enrich our school.

There is, however, a commitment to one particular type of diversity that the school has long had and which should continue. This is a commitment to racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers. These students are particularly likely to have experiences and perspectives of special importance to our mission.

Over the past two decades, the law school has made special efforts to increase the numbers of such students in the school. We believe that the racial and ethnic diversity that has resulted has made the University of Michigan Law School a better law school than it could possibly have been otherwise. By enrolling a "critical mass" of minority students, we have ensured their ability to make unique

contributions to the character of the Law School; the policies embodied in this document should ensure that those contributions continue in the future.

While one of our goals is to have substantial and meaningful racial and ethnic diversity, we do not, as we have already indicated, mean to define diversity solely in terms of racial and ethnic status. Nor are we insensitive to the competition among all students for admission to the law school. Speaking generally, the faculty believes the admission process has functioned well in recent years, producing classes both diverse and academically outstanding, classes made up of students who promise to continue the tradition of outstanding contribution by Michigan Graduates to the legal profession.

Our object in this memorandum is therefore as much to ratify what has been done and to reaffirm our goals as it is to announce new policies. We do expect that in the foreseeable future the proportion of students we admit from the upper right portion of the index grid will either stay constant or will increase with broad improvements in our applicant pool. It is also worth noting, in connection with those goals which concern the overall composition of the class, such as adequate representation of Michigan residents, or diversity, that the more people we admit without reference to residency or diversity-relevant characteristics who nonetheless *are* Michigan residents or *have* particular diversity-relevant characteristics, the fewer other people will be aided significantly in the admissions process by residency or by those same diversity-relevant characteristics. This is obviously not a ceiling on the admission of residents or members of any other group. It merely reflects the fact that at some point the relevance

of residency *as such*, or of the possession of various diversity-relevant characteristics *as such* may be greatly diminished or exhausted.

In the course of regular consultation as the admissions year progresses, the Dean of Admissions should keep the Admissions Committee informed of the profile of offers and acceptances to date and of the evolving make-up of the class. Also, the Admissions Committee should read a representative sample of all files of students who are admitted from outside the upper right portion of the grid. The Committee should be consulted in any cases that present novel issues or raise general policy questions. And finally, as we have already noted concerning one particular sort of case, all students with relatively low indices should have their transcripts flagged so that each year's Committee may receive reports on such students' academic success. Such reports may help in further refinement of the selection process.

We believe that the policies and procedures specified above should each year yield a richly diverse class that is as capable as that to be found at any American law school. To this end, we recommend adoption of this report.

Don Herzog
Jeff Lehman
Don Regan
Ted Shaw
Dennis Shields (ex officio)
Richard Lempert (chair)

ROL: gcr

FIGURE *

University of Michigan Grid 1991

All Applicants
Applicants/Offers
Average LSAT Score

GPA	No LSAT	10-13	14-17	18-21	22-25	26-29	30-33	34-37	38-41	42-45	46-48	TOTAL
>3.74	0/0	0/0	0/0	1/0	5/0	19/0	48/3	103/1	276/41	340/170	202/165	994/380
3.74 3.50	0/0	0/0	1/0	2/0	13/0	36/0	92/5	209/6	499/36	544/136	241/169	1637/352
3.49 3.25	0/0	3/0	2/0	6/0	14/0	58/0	145/5	260/17	463/27	477/54	183/36	1611/139
3.24 1.00	0/0	1/0	5/0	19/0	27/0	73/0	132/2	186/12	319/14	249/9	89/16	1100/53
2.99 2.75	0/0	0/0	5/0	20/0	41/0	65/1	85/0	108/2	154/5	103/8	37/2	618/18
2.74 2.50	0/0	2/0	3/0	21/0	31/0	42/0	60/0	65/0	58/0	34/0	13/0	329/0
2.49 2.25	0/0	1/0	7/0	10/0	18/0	43/0	38/0	31/1	18/0	11/0	3/0	180/1
2.24 2.00	0/0	1/0	7/0	6/0	14/0	19/0	15/0	4/0	6/0	7/0	1/0	80/0
<2.00	0/0	1/0	1/0	0/0	1/0	6/0	2/0	1/0	2/0	0/0	0/0	14/0
NO GPA	38/0	3/0	3/0	3/0	5/0	11/0	9/0	11/0	13/0	4/1	3/2	103/3
TOTAL	38/0	12/0	34/0	88/0	169/0	372/1	626/15	978/39	1808/123	1769/378	772/410	6666/966

11/21/91 revised

*87% of the applicants we admit have LSAT scores and UGPAs that place them in the upper right portion of the grid, as marked off by the solid line.

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Nos. 01-1333/1416/1418/1438/1447/1516

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JENNIFER GRATZ AND PATRICK HAMACHER FOR THEMSELVES AND ALL OTHER SIMILARLY SITUATED, Plaintiffs-Appellants (01-1333 and 01-1418), Plaintiffs-Appellees (01-1416), v. LEE BOLLINGER, ET AL., Defendants-Appellees (01-1333 and 01-1418) Defendants-Appellants (01-1416), EBONY PATTERSON, ET AL., Defendants-Appellees (01-1333) Intervening Defendants (01-1416) Intervening Defendants-Appellees (01-1418) Intervening Defendants-Appellants (01-1438)	**ORDER** (Filed Oct. 19, 2001)
BARBARA GRUTTER, Plaintiff-Appellee (01-1447 and 01-1516), v. LEE BOLLINGER, ET AL., Defendants-Appellants (01-1447) and	

KIMBERLY JAMES, ET AL.,)
)
Intervening Defendants-)
Appellants (01-1516).)
)

BEFORE: MARTIN, Chief Circuit Judge; BOGGS, SILER, BATCHELDER, DAUGHTREY, MOORE, COLE, CLAY, and GILMAN, Circuit Judges.

The plaintiffs in these consolidated appeals filed a petition seeking initial *en banc* review of the decisions of the two district courts before whom the cases were heard. The petition was referred to the three-judge panel to which the appeals had been assigned for oral argument on October 23, 2001.

The panel requested that all of the active judges of the court be polled to determine whether or not the petition should be granted and the appeals be presented in the first instance to the *en banc* court for argument and decision. A majority of the active judges voted to grant the petition; therefore

IT IS ORDERED that the petition for initial hearing *en banc* be, and it hereby is, GRANTED. It is FURTHER ORDERED the oral argument scheduled for October 23, 2001 is cancelled; oral argument to the *en banc* court will be on Thursday, December 6, 2001, at 1:30 P.M., EST, in Cincinnati, Ohio.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

Supreme Court of the United States

No. 02-241

Barbara Grutter,

Petitioner

v.

Lee Bollinger, et al.

ORDER ALLOWING CERTIORARI. Filed December 2, 2002.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

December 2, 2002